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# An Analysis of Aspects of the Workmen's Compensation Act of New Mexico

Robert W. Thomas Jr.

THOMAS

WORKMEN'S COMPENSATION ACT OF NEW MEXICO

IMPORTANT!

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# AN ANALYSIS OF ASPECTS OF THE WORKMEN'S COMPENSATION ACT OF NEW MEXICO

By

Robert W. Thomas Jr.

A Thesis

In partial fulfillment of the

Requirements for the Degree of

Master of Arts in Economics

The University of New Mexico
1950

This thesis, directed and approved by the candidate's committee, has been accepted by the Graduate Committee of the University of New Mexico in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

E. F. Castetter

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# CHAPTER I

## THE PROBLEM AND THE NATURE OF THE STUDY

This thesis is a survey of certain aspects of the Workmen's Compensation Act of New Mexico. The problem of determining what actually has taken place under certain statutory provisions of the New Mexico Act is the major problem to which this thesis is addressed. In an effort to evaluate the New Mexico Act a contrast with ideal legislation will be made and a contrast with the Arizona Workmen's Compensation Act will be undertaken.

In order to appraise the desirability of the current aims of the New Mexico Act, a comparison will be made between this Act and the ideal act as proposed by the Fifteenth National Conference on Labor Legislation held in Washington, D. C., in 1948. This ideal proposal was chosen for this purpose because itrepresents the culmination of the considered opinions of labor leaders and of state administrators on the question of what should be included in a good workmen's compensation act.

Arizona was chosen for comparison because of its similarity to New Mexico. Both states are relatively sparsely populated; both have similar population densities and similar peoples. Economic, climatic, and geographic factors within the two states are much alike. Because of these similarities one might assume that a legal code in operation in one of thetwo could be feasibly enacted in the other.

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The subject of workmen's compensation has received extensive treatment. Many books and pamphlets have been written on the subject.

Most of the books available are quite old and, although valuable, have little significance for this report. Pamphlets particularly have been drawn upon here. However, even these have been generally too broad to be of great value in this study.

Studies of the type undertaken here were not to be found. Some theses and dissertations covering the historical aspects of workmen's compensation in other states were noted. Nothing was available which followed the plan and procedure of this paper.

Since material examining particular state compensation programs is scarce and material on the subject of the New Mexico Workmen's Compensation Act is non-existent, the desirability of undertaking a study such as this is readily seen. This study is worthwhile also because of the fact that New Mexico is one of the few states still adhering to a court administered program. Most states have adopted a commission administered workmen's compensation program. Also, many states have adopted either competitive or exclusive state fund insurance programs.

Some states, dissatisfied with the record of private insurance companies in this field, have resorted to writing workmen's compensation insurance. For this purpose insurance departments have been established by these states and premiums are collected on policies written for employers who insure with the state. The money so collected is put into a state fund for the payment of benefits to injured workers. If a state requires employers to insure workers through the state fund, then that state is said to have an exclusive state fund. If a state operates a fund for workmen's compensation without requiring employers to carry

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their insurance through the fund, but permits employers to insure with private companies, then that state has a competitive state fund. Both types of state funds are in operation in the United States. Neither type exists in New Mexico.

Workmen's compensation acts throughout the world are based upon the theory that work injuries will arise because of the inherent risk in industrial pursuits. Furthermore, the theory requires that the worker suffering such injury be compensated, not on the basis of negligence, but on the basis of the relation of the injury to the job.[1] This theory has developed in all industrial countries as a result of the industrial revolution.

Of all industrial nations, Germany was first in this field. By 1884 Germany had evolved the idea of workmen's compensation legislation. In 1897 England enlarged upon the German idea, substituting for common law the theory of workmen's compensation by statutory enactment. English legal minds evolved the phrase "personal injury by accident arising out of and in the course of the employment" as the basis for awards. For such personal injury a worker could get under the new legislation a percentage of his wages during periods of injury-enforced unemployment, plus medical care at the employer's or the insurer's expense.[2] From 1902 on the pressure in the United States for similar acts rose. By 1911 eleven states had workmen's compensation laws.[3] Today all forty-

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1 Samuel B. Horovitz, Injury and Death Under Workmen's Compensation Laws (Boston: Wright & Potter Printing Co., 1944), p. 5.

2 Loc. cit.

3 Ibid., p. 7.

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WORKMEN'S COMPENSATION LEGISLATION

The theory that work injuries will arise because of the interest risk in industrial pursuits. Furthermore, the theory requires that the worker suffering such injury be compensated, not on the basis of negligence, but on the basis of the relation of the injury to the job. This theory has developed in all industrial countries as a result of the industrial revolution.

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1 Samuel B. Horovitz, Injury on Duty (Boston: Boston University Graduate School, 1941), p. 1.

2 Loc. cit.

3 Ibid., p. 2.

eight states have such acts. Mississippi was the last to join the ranks, her law going into effect January 1, 1949.[4]

All workmen's compensation acts exclude the three common law defenses from among defenses available to employers under the respective acts. The defenses excluded are: 1) contributory negligence, 2) assumption of risk, and 3) fellow servant clause. With these defenses removed an injured worker cannot easily be denied his compensation benefits. Workmen's compensation acts, then, are designed to assure injured workers of benefits and to protect employers from the uncertainty of damage suits.

This thesis deals with the following aspects of the New Mexico Act: 1) coverage, 2) cash benefits, 3) medical benefits, 4) regulation of attorney's fees, 5) regulation of unsafe working conditions and 6) administration. Concluding the thesis are chapters comparing the New Mexico Act with the ideal and with the Arizona Act. Certain conclusions regarding the effectiveness of the New Mexico Act and certain recommendations are given in the final chapter.

Since printed material on the New Mexico Workmen's Compensation Act was scarce, the author relied heavily upon material obtained from interviews with people intimately acquainted with the operation of the law. Files of state officials and their personal letters were used. An examination of the Arizona workmen's Compensation Act and the

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4 Analysis of Provisions of Workmen's Compensation Laws and Discussion of Coverages, and Supplement (Washington: Insurance Department, Chamber of Commerce of the United States, 1948), Supplement, p. 1.

New Mexico Act was undertaken. Bulletins of the Bureau of Labor Standards and the Bureau of Labor Statistics were used for background material and for information pertinent to the New Mexico scene. Letters from individuals closely associated with the administration of workmen's compensation were used to supply much of the needed information. On points of law, certain New Mexico cases, as well as cases in other jurisdictions, were studied.

This thesis will present factual data on the operation of the New Mexico Act and will attempt to evaluate that Act. The beginning chapter sets forth briefly a history of the New Mexico Workmen's Compensation Act and discusses the coverage provisions of the Act.

## CHAPTER II

## COVERAGE

The first New Mexico Workmen's Compensation Act was enacted in 1917. New Mexico enacted the current Workmen's Compensation Law in 1929. Several amendments have been made since that date, particularly regarding medical benefits after injury and maximum weekly compensation during convalescence.[1]

The New Mexico Act covers the state, political subdivisions thereof, and every private employer of four or more workers engaged in any of the extra-hazardous pursuits listed in the Act. However, an employer whose workers are engaged in work upon any derrick, scaffolding or other structure ten feet or more above the ground is within the provisions of the Act regardless of the total number of his employees.[2]

However, those employers who are presumed to be covered by the New Mexico Act may avoid carrying workmen's compensation insurance. All these employers need do is to file a statement with the clerk of the district court for the county in which they are working to the effect that they do not elect to be covered by the New Mexico Workmen's Compensation Act. This action may be taken on the first day of any month. Following this action an employer is required to post notices about the premises to inform employees that he is not covered by the

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1 N.M. Stat. 1941, Sec. 57-901 ff.

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Act.[3] These provisions illustrate that the New Mexico Act is elective. No compulsion is placed upon the employer to assure that his workers are covered.

Employers not engaged in extra-hazardous pursuits are excluded from the provisions of the Act unless they take action to obtain coverage. The action required is the filing of a statement with the clerk of the district court to the effect that the employer elects to be covered by the Act.[4] This provision grants every employer the right to be covered by the statute, but neither this provision nor the previous one cited makes workmen's compensation insurance compulsory for any group.

Inaction regarding the filing of the statements mentioned by employers engaged in extra-hazardous pursuits makes these employers liable under the Workmen's Compensation Act. Inaction by the employers not engaged in extra-hazardous pursuits leaves them and their workers without the protection of the Act.

In legal decisions on the question of whether or not an employee was covered by the New Mexico Workmen's Compensation Act the courts have taken a liberal attitude.

As early as 1924 this liberal attitude was displayed. Miguel Gonzales, Jr., was accidentally killed in Hurley, New Mexico, on March 14, 1921, in the courseof his employment as a laborer for the Chino Copper Company. This man was supporting his parents at the time of his

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3 Ibid., Sec. 57-904.

4 Loc. cit.

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Employers not covered in extra-hazardous occupations are excluded from the provisions of the act unless they elect to come in coverage. The action required is the filing of a statement with the clerk of the district court to the effect that the employer elects to be covered by the Act. This provision permits every employer who might to be covered by the Act, but neither will consider the cost of previous one cent raise workmen's compensation insurance compulsory for any group.

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As early as 1924 this liberal attitude was demonstrated. Howard Cornelius, Jr., was accidentally killed in Bisbee, Arizona, on March 14, 1921, as the result of his employment as a laborer for the Calumet Copper Company. This man was transporting his parents at the time of his

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3 Idem., Sec. 3-2-2.

4 Idem., op. cit.

death. The court viewed the case as one coming under the New Mexico Workmen's Compensation Act of 1917. The court ruled in favor of the dependents of Mr. Gonzales, holding the theory behind the New Mexico Act was compensation and not denial of it. Also, the court stated that the purpose of the Act was to establish a more humanitarian system for injured workmen and their dependents by providing a speedy and inexpensive method of obtaining compensation.[5]

The case of Stevenson v. Lee Moor Contracting Company, settled in 1941, further illustrates the liberal attitude of the New Mexico court. On March 19, 1938, C. R. Stevenson was assigned to drive a truck owned by the defendant. This truck discharged an excessive amount of smoke and gases which were inhaled by the driver. These gases weakened the resistance of Stevenson to pneumo-cocci germs. This weakened condition caused the germs to multiply, resulting in a case of pneumonia for the claimant. The court ruled that this case was within the province of the New Mexico Workmen's Compensation Act and not a case of occupational disease. Further, the court ruled that the New Mexico Act should be liberally construed in favor of the claimants.[6]

Further broadening of the coverage of the New Mexico statute occurred in the case of Jones v. George F. Getty Oil Company. Frank D. Jones was hired in Texas to work in New Mexico for E. C. Norwood. Norwood owned a gas and oil lease in New Mexico. The Getty Oil Company entered into a contract with Norwood to supply him with

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[5] Gonzales v. Chino Copper Co., 29 N.M. 228 (1924).

[6] Stevenson v. Lee Moor Contracting Co., 45 N.M. 354 (1941).

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[6] Stevenson v. Lee Moor Contracting Co., 45 N.M. 324 (1941).

water. On the date of the injury, April 8, 1934, the water wells of the Getty Oil Company failed to operate and Jones was one of the men assigned by Norwood to repair these wells. In the course of the repairing operation Jones was injured by a fall. The court ruled the defendant was to pay Jones workmen's compensation under the New Mexico Act, for the New Mexico statute was interpreted to extend protection to workers who were not employees at common law. The Act also was interpreted as a device for avoiding uncertainty in litigation and for assuring injured workmen and their dependents a prompt payment of compensation.[7]

In McKinney v. Dorlac the court held that McKinney, fatally injured in an auto accident, was injured "in the course of his employment."[7a] McKinney had been sent to Roswell, N. M., by his employer. Enroute the man was killed in an auto accident. The widow was awarded compensation. This case illustrates the liberal attitude of the court and a broad view of what constitutes "in the course of employment."

The New Mexico Act has been rejected by many local coal mines because of their inability to acquire workmen's compensation insurance.[8] This group is covered by the extra-hazardous provision of the New Mexico Workmen's Compensation Act and is expected to carry the insurance unless notices are posted and statements of rejection are filed in the manner already noted.

From information collected by interviews the author has been led

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7 Jones v. George F. Getty Oil Co., 92 F.2d 255 (1937).

7a McKinney v. Dorlac, 48 N. M. 149 (144).

8 Ebenezer Jones, Assistant Labor Commissioner, Interview, June 21, 1950.

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7 Jones v. George E. Getty Oil Co., 44 N.M. 255 (1939).

7a McKinney v. Dorian, 49 N. M. 199 (1945).

8 Ebenezer Jones, Assistant Labor Commissioner, Interview, June 21, 1950.

to the conclusion that voluntary acceptance by employers of the New Mexico Act has occurred to a considerable extent.

In an effort to determine the exact extent of voluntary acceptance and the extent of rejection within Bernalillo County, the Clerk of the District Court was interviewed. No record of any voluntary acceptance was available, nor was any record of any rejections to be seen. This does not mean the clerk is performing her duties improperly, but it is illustrative of the lack of coordination which exists within the administration of the New Mexico Workmen's Compensation Act. The difficulty seen in the effort to gather statistical information on this point stems from the fact that no state agent has taken the responsibility for checking this important matter. The Labor Commissioner and his staff might be expected to undertake this task. However, the multiplicity of the duties and the limited funds for that office may be the chief reason for failure to gather this information.

The duties of the clerk of the district court affecting workmen's compensation cases are few. The clerk must notify all parties in a case when a claimant files for compensation under the Workmen's Compensation Act. Besides performing this duty, the clerk must record the case properly. Nothing in the law requires that the clerk be personally informed at all times of the number of employers carrying workmen's compensation insurance. The files are checked to determine an employer's relation to the Workmen's Compensation Act only when a worker is injured and he files a request for settlement of the case by the court.[8a]

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8a N. M. Stat. 1941, Sec. 57-913.

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In an effort to determine the exact extent of voluntary acceptance and the extent of rejection within Bernalillo County, the Clerk of the District Court was interviewed. He reported that any voluntary acceptance was available, nor was any record of any rejections to be seen. This does not mean the clerk is performing her duties improperly, but it is illustrative of the lack of coordination which exists within the administration of the New Mexico Workmen's Compensation Act. The difficulty seen in the effort to gather statistical information on this point stems from the fact that no state agent has taken the responsibility for checking this important matter. The Labor Commissioner and his staff might be expected to undertake this task. However, the multiplicity of the duties and the limited funds for that office may be the chief reason for failure to gather this information.

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8. N. M. Stat. 1941, Sec. 57-912.

In an effort to determine the number of employers carrying workmen's compensation insurance in New Mexico the author interviewed Mr. Ralph Apodaca, the Superintendent of Insurance.[9] His office had no such record. Neither was this information to be found in the office of the Labor Commissioner.[10] These men were of the opinion that very few employers elected to reject the Act. Some, such as coal mine and saw mill operators, may be forced to reject the provisions of the Workmen's Compensation Law because insurance companies refuse to carry their risks, but employers generally are quite ready to accept the protection of an insurance program rather than to be faced with the uncertain outcome of a suit for damages filed by an injured worker.

Insurance companies writing workmen's compensation insurance had no division of workmen's compensation policy holders which would indicate the number of employers voluntarily carrying the insurance or the number of those involuntarily carrying it.

An employer is considered to be "voluntarily" under the New Mexico Act when his work falls in the category of a non-hazardous pursuit and when he has taken out an insurance policy without being so required by law. An employer is "involuntarily" covered when his work is included in the list of extra-hazardous pursuits and he is required by law either to carry workmen's compensation insurance or reject the

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[9] R. F. Apodaca, Superintendent of Insurance, Interview, June 21, 1950.

[10] Ebenezer Jones, Assistant Labor Commissioner, Interview, June 21, 1950.

provisions of the law. These terms "voluntary" and "involuntary" are rather misleading for no employer in New Mexico is forced to carry workmen's compensation insurance, but they are terms in general use for the purpose of dividing employers and are consequently used here for that same purpose.

Insurance companies in Albuquerque did have voluntary holders of workmen's compensation policies, but none were certain of how many. The insurance companies were reluctant to examine their files for this information, since they had no need for such information and would have had great difficulty compiling the lists.

Consequently no way appeared open for determining either the total number or the total percentage of New Mexico employers carrying workmen's compensation insurance in either of the two classes mentioned above. Coverage under elective systems for the United States as a whole has been estimated as fifty percent.[11] This may be applicable to New Mexico, but no way of proving it is available.

If records of the numbers and the names of employers who have voluntarily accepted the New Mexico Workmen's Compensation Act, of employers who have rejected the Act, and of employers permitted to carry their own insurance were kept, the information would be of use in any attempt to evaluate the effectiveness of the coverage provisions of the New Mexico Act. Also, this material could be used as the basis for

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[11] John B. Andrews, Progress of State Insurance Funds under Workmen's Compensation (United States Department of Labor, Division of Labor Standards, Bulletin No. 30, Washington: U.S. Government Printing Office, 1939), p. 16.

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11 John P. Andrews, Progress of State Insurance Funds under Workmen's Compensation (United States Department of Labor, Division of Labor Standards, Bulletin No. 70, Washington: U.S. Government Printing Office, 1939), p. 16.

studies to determine the cost of self-insurance as compared with the cost of insuring workers' risks through private insurance companies.

This statistical data might logically be compiled by the Labor Commissioner's Office since he is charged with other responsibilities of this type. However, until an adequate staff and budget for this type of work are provided, the Commissioner will probably feel bound to direct his attention to other matters.[11a]

Improvements in coverage provisions applicable to New Mexico have been recommended by the Fifteenth and Sixteenth National Conferences on Labor Legislation. These conferences, begun some years ago under the guidance of Miss Frances Perkins, Secretary of Labor from 1933-1945, have gathered together administrators of state labor departments and state and national labor leaders.[12] The Fifteenth National Conference proposed in 1948 an ideal Workmen's Compensation Act which was read into the record by the Sixteenth National Conference for the purpose of further emphasizing it.[13] This Act, originally proposed as a model for the forty-eight states, contained provisions worthy of notice at this point.

Participants in the Conference believed that a compulsory law, elective for agricultural and domestic workers, was desirable. They also supported the provision that coverage should be extended to all industries and all employees, including state and municipal workers.

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11a N. M. Stat. 1941, Sec. 57-116 appropriates $6,000 annually for the Labor Commissioner. Eighteenth Annual Report, New Mexico State Labor and Industrial Commission, Santa Fe, 1948, gives total disbursements of $14,869.19.

12 Resume of the Proceedings of the Sixteenth National Conference on Labor Legislation (U. S. Department of Labor, Bureau of Labor Standards, Bull. No. 117, Washington, 1949), p. 1.

13 Ibid., p. 21.

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12 Reports of the Proceedings of the Sixteenth National Conference on Labor Legislation (U. S. Department of Labor, Bureau of Labor Statistics, Bull. No. 117, Washington, 1940), p. 1.

13 Ibid., p. 21.

No exemptions were to be made for non-hazardous pursuits and no exemptions for employers with only a small number of employees. The right of the employee to waive compensation was to be prohibited. Workers hired in one state and put to work in another (extra-territorial workers) were to be included under the law.[14]

From the above suggestions, it is apparent New Mexico might make desirable improvements in itslaw. The New Mexico Workmen's Compensation Act is limited to covering extra-hazardous pursuits wherein, generally speaking, four or more workers are engaged. The Act is not compulsory, but elective to a degree for all. New Mexico now has coverage for extra-territorial workers,[14a] but the possibility of adding the other improvements appears remote, for no articulate group in New Mexico is supporting these recommendations.

The only way currently available in New Mexico to assure effective coverage of workers is to rely upon the employer's fear of suits for damages by injured workers and the employer's desire for insurance to cover the work-connected disabilities of employees. The desire for insurance is, of course, an outgrowth of the fear mentioned and also an outgrowth of the desire to take as many uncertain factors out of business as possible. This is the aim in all sound business operations.

New Mexico thus has limited coverage provisions and an absence of necessary statistical information on this subject. The next chapter deals with the coal mines. This area of employment is probably the

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[14] Ibid., p. 22.

14a N. M. Stat. 1941, Sec. 57-933 et. seq.

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[14] Ibid., p. 22.

The N. M. Stat. 1941, Sec. 57-915 et. seq.

least protected by the Workmen's Compensation Act of all occupational areas in the state.

## CHAPTER III

## THE CASE OF THE COAL MINES

In the previous chapter coverage of employments in New Mexico was seen to be limited to extra-hazardous areas of work. Among these areas are the coal mines. However, because insurance companies are not forced in New Mexico to write workmen's compensation insurance for any firm or business operation, several extremely hazardous businesses are not granted policies by insurance companies because the risks involved are too great. Among such business operations are the New Mexico coal mines.

In view of this situation the coal mines of New Mexico have two alternatives open to them: 1) they may carry self-insurance, or 2) they may reject the workmen's compensation act and pray for no serious accident as the operator of the Carthage Mine has said he does.[1]

Several of the large coal mine operators in New Mexico carry insurance against catastrophes with Lloyds of London for protection against disasters which would cost five thousand dollars or more. These companies then insure themselves for the remainder of the risk.[2] The cost of this type of insurance program is unknown. No state officials had any record of the expense.

The smaller mine operators, because of their poorer financial

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[1] A. B. Baca, Socorro, New Mexico, Letter to the Author, June 16, 1950.

[2] John Garcia, State Inspector of Mines, Albuquerque, New Mexico, Interview, June 12, 1950.

condition and inadequate bookkeeping procedures, are left with the latter alternative, that of rejecting the Act. Since the small mine operators are in no position to control the price of their coal, they are unable to plan adequately for compensation for work injuries.[3] Coverage of miners by workmen's compensation insurance policies written for employers by private insurance companies has been found to be practically non-existent, according to the State Inspector of Mines.

The author interviewed one small mine operator who had a workmen's compensation insurance policy with a private insurance company. This man operated the Ferro Mine in Bernalillo County. His policy costs $252 a year, or eight dollars per one hundred dollars of payroll, whichever is greater. This cost is divided as follows: 1) fifty-four cents per one hundred dollars of payroll for occupational disease insurance, and 2) $7.46 for workmen's compensation insurance. This man began his policy in 1938. Since that date he has had one minor accident. A worker was injured in 1948 while cutting coal. The injured man was taken to Lovelace Clinic for treatment. No broken bones were found. The man's chest and arms were bandaged and he was released. This mine operator is believed to be the only small mine operator in the state who is insured by a private insurance company.[4]

The lamentable situation in which coal mine operators find themselves has been brought to the attention of many members of the

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[3] R. F. Deacon Arledge, Judge, Second Judicial District, Interview, June 14, 1950.

[4] M. P. Trossello, Ferro Mine Operator, Albuquerque, New Mexico, Interview, June 16, 1950.

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The author interviewed one small mine operator who had a workmen's compensation insurance policy with a private insurance company. This man operated the Ferro Mine in Bernalillo County. His policy costs $232 a year, or eight dollars per one hundred dollars of payroll, whichever is greater. This cost is divided as follows: 1) fifty-four cents per one hundred dollars of payroll for occupational disease insurance, and 2) $7.46 for workmen's compensation insurance. This man began his policy in 1938. Since that date he has had one minor accident. A worker was injured in 1948 while cutting coal. The injured man was taken to Isleta Clinic for treatment. No broken bones were found. The man's chest and arms were bandaged and he was released. This mine operator is believed to be the only small mine operator in the state who is insured by a private insurance company.

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state legislature and the state administration by Mr. Garcia, State Inspector of Mines for New Mexico.[5] For example, he has written Mr. Sixto Leyva, State Representative, outlining the problem and recommending that the insurance companies be forced to carry coal mine risks, or that a state program be established to write this kind of insurance.[6] The chief reason givenagainst this proposal for a state fund was that it will cost too much to start, probably as much as $250,000.[7] The cost to whom was not explained; the reason appeared to be only an excuse.

In an effort to clarify the situation regarding coal mines, Mr. Garcia sought legal advice on the status of coal miners under the Workmen's Compensation Act. In a letter to Judge Arledge from R. W. Ward, Assistant Attorney General, which Mr. Garcia has in his office, the Attorney General's office ruled that mining companies employing four or more workmen come under the Workmen's Compensation Act. If a mine operator is unable to secure workmen's compensation insurance, he has two courses open to him. The operator may reject the Act by posting notices to that effect and giving written notice to the clerk of the district court, or "the employer may file an undertaking executed by himself and two or more good and sufficient surities, or secured in

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5 John Garcia, Loc. cit.

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5 John Garcia, loc. cit.

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7 John Garcia, loc. cit.

some other way as the Court may direct."[8] This is the provision for self-insurance and the employer may take this course if he so chooses. Tables I and II show an estimate by Mr. Garcia of the number and location of coal mines which are self-insured and those which carry no insurance. It will be seen from these tables that the larger mines are self-insured and the smaller ones have no insurance whatsoever. However, if these self-insured mines have filed statements to that effect in the proper courts, the State Inspector of Mines does not know about it.

Should a smaller mine operator have an employee who becomes injured, the operator must be financially able to settle with the miner either through the courts or outside of them. One such case recently arose. The miner suffered an injured shoulder. The employer maintained the miner was not injured. This miner then went to the State Inspector of Mines for advice. The man was sent to have his shoulder X-rayed. The reports revealed no bone injury, but the man did have an injury to the tendons of his shoulder and the doctor recommended that the man rest for two weeks. The State Inspector of Mines then went to the employer and recommended that the worker be compensated for his lost time. If this was not done the Inspector said he would see that the case went to court. The operator submitted to this pressure and paid the man on the basis of the New Mexico Workmen's Compensation Act rates.[9] Should a great coal mine disaster occur in New Mexico, the operator might very

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[8] Robert W. Ward, Assistant Attorney General, letter to the Honorable R. F. Deacon Arledge, District Judge, Second Judicial District, Albuquerque, New Mexico, April 8, 1948.

[9] John Garcia, Loc. cit.

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[8] Robert N. West, Assistant Attorney General, Letter to the Honorable E. T. Dancis Andrews, District Judge, Second Judicial District, Albuquerque, New Mexico, April 2, 1964.

[9] John Garcia, Jr., op. cit.

TABLE I

COAL MINE EMPLOYERS AND EMPLOYEES ESTIMATED TO BE UNDER A SELF-INSURED PROGRAM

BY COUNTIES

| County(*) | No. of Coal Mines | No. of Employees |
|---|---|---|
| Colfax | 4 | 890 |
| McKinley | 3 | 220 |
| Rio Arriba | 0 | 0 |
| Sandoval | 0 | 0 |
| San Juan | 0 | 0 |
| Santa Fe | 2 | 73 |
| Socorro | 1(**) | 12 |
| Totals: | 10 | 1195 |

(*) All counties in which coal mining was done during fiscal year ending 1949, according to the State Inspector of Mines.

(**) About this one mine the inspector is less certain than he is of the others.

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[10] John Garcia, Loc. cit.

TABLE I

COAL MINE EMPLOYERS AND EMPLOYEES ESTIMATED TO BE UNDER A SELF-INSURED PROGRAM

BY COUNTIES

| County(*) | No. of Coal Mines | No. of Employees |
|---|---|---|
| Colfax | 4 | 490 |
| McKinley | 3 | 220 |
| Rio Arriba | 0 | 0 |
| Sandoval | 0 | 0 |
| San Juan | 0 | 0 |
| Santa Fe | 2 | 70 |
| Socorro | 1(**) | 14 |
| Totals: | 10 | 1495 |

(*) All counties in which coal mining was done during fiscal year ending 1949, according to the State Inspector of Mines.

(**) About this one mine the inspector is less certain than he is of the others.

10 John Garcia, Loc. cit.

TABLE II

COAL MINE EMPLOYERS AND EMPLOYEES ESTIMATED TO BE NOT COVERED BY ANY INSURANCE PROGRAM

By Counties[11]

| County | No. of Coal Mines(*) | No. of Employees |
|---|---|---|
| Colfax | 8 | 44 |
| McKinley | 7 | 39 |
| Rio Arriba | 4 | 42 |
| Sandoval | 3 | 23 |
| San Juan | 2 | 11 |
| Santa Fe | 0 | 0 |
| Socorro | 2 | 17 |
| Total: | 26 | 176 |

(*) Eleven of these coal mines have less than four employees.

[11] JohnGarcia, Loc. cit.

well be unable to cover the cost of compensating dependents of dead workers. Also, the cost of medical benefits and the payment of the required compensation for injured employees might be too great a financial burden.

In an effort to secure action on the lack of insurance for miners, the State Inspector of Mines wrote various District Judges to see whether the courts could take some action to determine the number of mine operators who did not have workmen's compensation insurance. Judge Carmody, in a letter to District Attorney Gutierrez, spoke against the advisability of having the court undertake such a survey, but believed such a survey should be made.[12] In a letter to Mr. Garcia, Judge Arledge stated he had requested the Attorney General to determine whether or not the actions of the mining operators constituted a violation of the criminal statutes.[13] The Attorney General's reply has been noted above. Employers may be fined under the Workmen's Compensation Act for failure to obey the statute.[13a] This would appear to be the section to which the judge referred.

One of the reasons for lack of workmen's compensation insurance for mine operators stems from the action of the Eighteenth Legislature.[14] This legislature increased the medical benefits a worker could receive

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12 Judge David W. Carmody, District Judge, letter to Hon. M. P. Gutierrez, District Attorney, Santa Fe, New Mexico, April 6, 1948.

13 Judge R. F. Deacon Arledge, letter to John A. Garcia, State Inspector of Mines, April 7, 1948.

13a N. M. Stat. 1941, Sec. 57-930.

14 John A. Garcia, letter to District Judges, April 2, 1948.

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14 N. M. Stat. 1941, Sec. 57-930.

14 John A. Garcia, Letter to Frederick Gurule, April 8, 1948.

TABLE III

REPORTED MINE FATALITIES NEW MEXICO[15]

| Fiscal Year | Fatal Accidents Coal Mines | Fatal Accidents Other Mines | Silicosis All Mines |
|---|---|---|---|
| 1937-38 | 4 | 17 | 0 |
| 1938-39 | 3 | 6 | 0 |
| 1939-40 | 7 | 9 | 2 |
| 1940-41 | 1 | 14 | 5 |
| 1941-42 | 5 | 5 | 6 |
| 1942-43 | 8 | 4 | 3 |
| 1943-44 | 13(*) | 7 | 3 |
| 1944-45 | 6 | 8 | 6 |
| 1945-46 | 3 | 4 | 10 |
| 1946-47 | 0(**) | 9 | 18 |
| 1947-48 | 2 | 5 | 12 |
| 1948-49 | 4 | 13 | ? |
| Totals: | 56 | 101 | 65 |

(*) Major disaster (four or more killed), killing six in Brilliant Coal Mines, Raton.

(**) A record for the state of a 15-month period with no fatality and a production record of 1.5 million tons of coal produced.

[15] State Inspector of Mines, Annual Reports to the Governor of New Mexico, for fiscal years 1937-1949.

## TABLE XVI

### RECORDED MINE FATALITIES NEW MEXICO[15]

| Mining Year | Fatal Accidents: Coal Mines | Fatal Accidents: Other Mines | Fatalities All Mines |
|---|---|---|---|
| 1937-38 | 4 | 17 | 0 |
| 1938-39 | 5 | 6 | 0 |
| 1939-40 | 7 | 9 | 2 |
| 1940-41 | 1 | 14 | 5 |
| 1941-42 | 5 | 5 | 6 |
| 1942-43 | 2 | 4 | 3 |
| 1943-44 | 13(*) | 7 | 3 |
| 1944-45 | 6 | 8 | 6 |
| 1945-46 | 3 | 4 | 10 |
| 1946-47 | 0(**) | 9 | 18 |
| 1947-48 | 2 | 5 | 12 |
| 1948-49 | 4 | 13 | 7 |
| Totals: | 36 | 102 | 65 |

(*) Major disaster (four or more killed), killing six in Brilliant Coal Mines, Raton.

(**) A record for the state of a 15-month period with no fatality and a production record of 1.5 million tons of coal produced.

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15 State Inspector of Mines, Annual Reports to the Governor of New Mexico, for fiscal years 1937-1948.

TABLE IV

FATAL MINING ACCIDENTS PER 1,000 EMPLOYEES[16]

| Fiscal Year | Coal | Other |
|---|---|---|
| 1937-38 | 1.7 | 5.5 |
| 1938-39 | 1.3 | 1.8 |
| 1939-40 | 3.5 | 2.6 |
| 1940-41 | 0.6 | 3.0 |
| 1941-42 | 2.8 | 1.1 |
| 1942-43 | 4.2 | 0.7 |
| 1943-44 | 7.2 | 1.5 |
| 1944-45 | 4.6 | 1.7 |
| 1945-46 | 2.3 | 0.8 |
| 1946-47 | 0.0 | 1.6 |
| 1947-48 | 1.4 | 0.8 |
| 1948-49 | 2.9 | 2.0 |

[16] State Inspector of Mines, Annual Reports to the Governor of New Mexico, for fiscal years 1937-1949.

TABLE IV

FATAL MINING ACCIDENTS PER 3,000 EMPLOYEES[16]

| Fiscal Year | Coal | Other |
|---|---|---|
| 1937-38 | 4.7 | 5.5 |
| 1938-39 | 2.3 | 1.8 |
| 1939-40 | 5.5 | 2.6 |
| 1940-41 | 0.4 | 3.0 |
| 1941-42 | 2.8 | 4.1 |
| 1942-43 | 4.2 | 0.7 |
| 1943-44 | 7.2 | 1.5 |
| 1944-45 | 4.6 | 4.2 |
| 1945-46 | 2.5 | 0.8 |
| 1946-47 | 0.0 | 1.6 |
| 1947-48 | 1.4 | 0.8 |
| 1948-49 | 2.9 | 3.0 |

[16] State Inspector of Mines, Annual Reports to the Governor of New Mexico, for fiscal years 1937-1949.

TABLE V

PRODUCTION RECORD[17]

| Fiscal Year | Total Value of Product Produced in the State | | Average Number of Employees by fiscal years (all mines) | | Tonnage |
|---|---|---|---|---|---|
| | Coal | Other | Coal | Other | Coal |
| 1937-38 | $ 3,540,332 | $ 8,391,047 | 2,345 | 3,142 | 1,239,716 |
| 1938-39 | 3,460,800 | 18,988,622 | 2,276 | 3,363 | 1,235,980 |
| 1939-40 | 3,048,017 | 28,691,214 | 1,992 | 3,465 | 1,069,000 |
| 1940-41 | 3,580,201 | 33,231,130 | 1,746 | 4,597 | 1,190,280 |
| 1941-42 | 4,929,458 | 38,984,479 | 1,830 | 4,686 | 1,578,718 |
| 1942-43 | 6,136,364 | 43,920,949 | 1,890 | 5,567 | 1,804,872 |
| 1943-44 | 5,709,027 | 43,115,270 | 1,752 | 4,669 | 1,753,500 |
| 1944-45 | 5,200,901 | 36,734,854 | 1,334 | 4,659 | 1,397,414 |
| 1945-46 | 5,351,388 | 32,567,577 | 1,320 | 4,760 | 1,315,199 |
| 1946-47 | 6,011,226 | 69,149,006 | 1,257 | 5,555 | 1,430,532 |
| 1947-48 | 6,712,043 | 85,981,386 | 1,350 | 5,933 | 1,416,099 |
| 1948-49 | 7,069,591 | 77,827,484 | 1,371 | 6,390 | 1,390,032 |

[17] State Inspector of Mines, Annual Reports to the Governor of New Mexico, for fiscal years 1937-1949.

TABLE VI

CAUSES OF FATAL INJURIES IN COAL MINES[18]

| Fiscal Year | Total | Explosion | Fall of Rock | Fall of Coal | Electricity | Haulage cars or ribs | Haulage run over | Hang Fire | Premature shots | Fall in Shafts | Cables or Rope | Trolley Pole | Suffocation or Asphyxiation | Machinery Inside | Machinery Outside | Unknown |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1937-38 | 4 | 0 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1938-39 | 3 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1939-40 | 7 | 0 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 |
| 1940-41 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1941-42 | 5 | 0 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1942-43 | 8 | 0 | 4 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| 1943-44 | 13 | 6 | 4 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1944-45 | 6 | 0 | 4 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| 1945-46 | 3 | 0 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1946-47 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1947-48 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| 1948-49 | 4 | 0 | 2 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[18] State Inspector of Mines, Annual Reports to the Governor of New Mexico, for fiscal years 1937-1949.

Source table-1949,

TO State Publicans of Illinois' Primary Indicate to the Democrat on Non Partisan Ballot

| | Primary Vote | Total | Gubernatorial | Lieutenant Governor | Secretary of State | Auditor of Public Accounts | Treasurer | Attorney General | Clerk of Court | Electricity | Heating Gas or Oil | Heating Gas Coal | Home Fire | Permanent Roofs | Fall in Quality | Decline to Roofs | Frostbite Roofs | Substitution to Permanent | Secretary | Insure | Nationwide | Oklahoma | Indiana |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Gubernatorial | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Lieutenant Governor | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Secretary of State | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Auditor of Public Accounts | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Treasurer | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Attorney General | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Clerk of Court | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Electricity | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Heating Gas or Oil | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Heating Gas Coal | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Home Fire | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Permanent Roofs | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Fall in Quality | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Decline to Roofs | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Frostbite Roofs | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Substitution to Permanent | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Secretary | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Insure | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Nationwide | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Oklahoma | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Indiana | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |

TABLE VII

REPORT ON FATAL COAL MINE ACCIDENTS[19]

| Year Fiscal | New Mexico No. of Fatalities | New Mexico Fatalities per Million Tons Produced | Year Calendar | United States No. of Fatalities | United States Fatalities per Million Tons produced |
|---|---|---|---|---|---|
| 1937-38 | 4 | 3.33 | 1937 | 1,413 | 2.83 |
| 1938-39 | 3 | 2.50 | 1938 | 1,105 | 2.79 |
| 1939-40 | 7 | 6.36 | 1939 | 1,078 | 2.41 |
| 1940-41 | 1 | 0.83 | 1940 | 1,388 | 2.71 |
| 1941-42 | 5 | 3.12 | 1941 | 1,266 | 2.22 |
| 1943-43 | 8 | 4.44 | 1942 | 1,471 | 2.30 |
| 1943-44 | 13 | 7.22 | 1943 | 1,451 | 2.22 |
| 1944-45 | 6 | 4.29 | 1944 | 1,298 | 1.90 |
| 1945-46 | 3 | 2.31 | 1945 | 1,079 | 1.71 |
| 1946-47 | 0 | 0.00 | | No report | |
| 1947-48 | 2 | 1.43 | | | |
| 1948-49 | 4 | 2.86 | | | |

[19] New Mexico State Inspector of Mines, Annual Reportsto the Governor of New Mexico, for fiscal years 1937-1949. Historical Statistics of the United States, 1789-1945 (U.S. Bureau of the Census, Washington, 1949), p. 153.

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| Year | New Mexico | | United States | |
|---|---|---|---|---|
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| 1937-38 | 4 | 3.33 | 1937 | 2.83 |
| 1938-39 | 3 | 2.50 | 1938 | 2.79 |
| 1939-40 | 7 | 5.35 | 1939 | 2.42 |
| 1940-41 | 1 | 0.83 | 1940 | 2.71 |
| 1941-42 | 5 | 3.12 | 1941 | 2.22 |
| 1942-43 | 6 | 4.44 | 1942 | 2.30 |
| 1943-44 | 13 | 7.22 | 1943 | 2.22 |
| 1944-45 | 6 | 4.29 | 1944 | 1.90 |
| 1945-46 | 3 | 2.31 | 1945 | 1.71 |
| 1946-47 | 0 | 0.00 | No report | |
| 1947-48 | 2 | 1.45 | | |
| 1948-49 | 4 | 3.86 | | |

[19] New Mexico State Inspector of Mines, Annual Report to the Governor of New Mexico, for fiscal years 1937-1949. Historical Statistics of the United States, 1789-1945. (U.S. Bureau of the Census, Washington, 1949), p. 133.

under the Workmen's Compensation Act. Formerly the benefits were limited tofour hundred dollars, but now the limit is seven hundred dollars and court action may be taken to secure payment for medical bills in excess of seven hundred dollars.[19a] This has made the coal mining industry an undesirable risk for insurance companies. Consequently the small mine operators must carry their own risks.

Table III showing reported mine fatalities in New Mexico illustrates that there are greater numbers killed in mines other than coal, but when these figures are translated into accidents per thousand employees one can see that coal mine operations have a somewhat higher fatal accident rate than do mines other than coal.

Looking at the table on production records, one can see that the value of product produced per employee is much greater for mines other than coal. This would seem to indicate that possibly coal mines are less financially capable of paying for protection under the Workmen's Compensation Act and possibly less able to cover injuries that may arise. This rate of return per employee may be a factor influencing the insurance companies in their decision. However, the tonnage figures and average number of employees for coal mines indicates that the industry has been in the past a fairly stable one. One might expect this fact to be an advantage to the coal mines in securing risk ratings for insurance.

In Table VI showing causes of fatal injuries in coal mines it is obvious that deaths from falling rocks have been more frequent than deaths from any other cause. Falling rocks, particularly rocks falling

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19a N. M. Stat. 1941, Sec. 57-919.

under the Workmen's Compensation Act. Formerly the benefits were limited to four hundred dollars, but now the limit is seven hundred dollars and court action may be taken to secure payment for medical bills in excess of seven hundred dollars.[18] This has made the coal mining industry an undesirable risk for insurance companies, especially the small mine operators must carry their own risks.

Table III showing reported mine fatalities in New Mexico indicates that there are greater numbers killed in mines under 1000 cars, but when these figures are translated into accidents per thousand employees one can see that coal mine operations have a considerable higher fatal accident rate than do mines other than coal.

Looking at the table on production records, one can see that the value of product produced per employee is much greater for mines other than coal. This would seem to indicate that possibly coal mines are less financially capable of paying for protection under the Workmen's Compensation Act and possibly less able to cover injuries that may arise. This rate of return per employee may be a factor taken into the insurance companies in their decision. However, the tonnage figures and average number of employees for coal mines indicates that the industry has been in the past a fairly stable one. This might argue this fact to be an advantage to the coal mines in securing risk ratings for insurance.

In Table VI showing causes of fatal injuries in coal mines it is obvious that deaths from falling rocks have been more frequent than deaths from any other cause. Falling rocks, particularly roof falling

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18a N. M. Stat. Ann. 1953, Sec. 57-9-2.

from the roofs of tunnels, are hazards uncommon to certain other types of mining. This danger is very real and apparent for coal mine activity and is believed to be a cause for coal mines having a poor risk rating. Insurance companies have stated that their refusal to insure coal mines stems from the poor working conditions in the mines.

Table VII reports on fatalities in coal mines for the United States as a whole and for New Mexico. New Mexico has had an erratic accident record. Generally New Mexico has been above the national average in fatalities per million tons of coal produced. The cause of this is unknown, but should be carefully examined by the proper state authorities.

Very little information is available on non-fatal accidents. The State Inspector of Mines is beginning a compilation of this information; he believed this would aid in reducing accidents. Careful safety enforcement is needed and apparently is being carried out to the best of the Inspector's ability. Coal mines, however, are not being insured and the reduction of accidents in these mines to date has not changed the attitudes of insurance companies. Greater safety enforcement may be needed.

The tables showing the probable extent of self-insurance by coal mines illustrates the need for some form of protection for small mine operators and employees. These small employers need to provide security for their employees against disabilities resulting from work injuries. If the employers cannot secure insurance the risks of working in a small mine are greatly increased. If New Mexico wishes to encourage

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small business, the security of workmen's compensation insurance should be extended in some manner to small mine operators and their employees.

In 1933 the Code of Mining Law was enacted in New Mexico.[19b] The provisions of this code are enforceable by the Mine Inspector's office. The operating budget for this office for the fiscal year 1948-1949 was $16,200. Of this, $12,000 was expended for the salaries of Mr. Garcia and his two assistants. The remaining $4,200 was used for travel expenses on inspection tours. The aim of this office is to inspect every mine in the state at least once a month. The budget does not permit this. The need for frequent inspections is evidenced by the fact that, although the use of black powder is prohibited by law, three and one half years ago when Mr. Garcia took his present job, twenty-two small mines were using it.[20] This shows that the law is not self-enforceable, and for the security of miners and employers frequent inspections are needed.

Since 1923 the mines have steadily lowered their non-fatal injuries per ton of coal produced.[21] In 1923, prior to the passing of the mining laws, 6,720 tons of coal were produced per non-fatal accident. In 1933, 9,155 tons per fatal accident was the yearly rate. In 1949 a significant improvement was seen, for 15,000 tons was produced per fatal accident for that year. This seems to indicate that mines are becoming safer places in which to work and this is a credit to all concerned.

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19b N. M. Stat. 1941, Sec. 67-301 et. seq.

20 John Garcia, Loc. cit.

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[19] N. Mex. Comp. Ann. 47-301 et. seq.

[20] John Garcia, Loc. cit.

[21] Loc. cit.

Generally operators cooperate well with the inspector in improving the safety situation. However, it is occasionally necessary to use coercion. The operator is ordered to fix an unsafe condition under penalty of court action. The miners are informed of the condition and cooperate by refusing to work. If neither of these two coercive measures work, court action is begun to enforce the improvement of the unsafe condition.[22] If the employer is convicted of a violation of the Mining Act, he is guilty of a misdemeanor and fined up to $200 or may be jailed for three months or both.[23] Violations have been found and an occasional case has been taken to court. However, the threat of such action is usually all that is required.[24]

From the standpoint of the miners, a compulsory workmen's compensation act with insurance issued by a state insurance fund would be desirable.[25] As the situation now stands insurance companies are at liberty to refuse to insure risks and have done this in the case of the coal mines, as has been seen. This leaves an extra-hazardous occupation inadequately covered. The New Mexico State Federation of Labor favors a state insurance fund also. In 1937 legislation was introduced for the state to carry or write all workmen's compensation insurance, but this was defeated, largely by the opposition of insurance companies.[26]

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22 Loc. cit.

23 Mining Laws of New Mexico, State Inspector of Mines, 1946. Section 67-2901.

24 John Garcia, Loc. cit.

25 Loc. cit.

26 Earl J. McDonald, Secretary-Treasurer, New Mexico State Federation of Labor, Letter to author, June 14,1950.

The Workmen's Compensation Act has been seen to be of little value to coal mine employees largely because of the hazards in mining. The aim of the Act is to protect hazardous industries, and the effectiveness of the Act has been seriously curtailed chiefly because insurance companies are not required to carry any risk they do not wish to carry. Some method of insuring coal miners is needed. Possibly with greater skill in enforcement of safety in coal mines, this group might be able to qualify for workmen's compensation insurance. However, provisions for assuring safe working conditions under the Workmen's Compensation Act are few as will be seen in the next chapter.

## CHAPTER IV

## SAFETY PROVISIONS

Coal mines in New Mexico generally are not covered by workmen's compensation insurance policies written by private insurers. This has been seen to result from the poor working conditions believed to be in existence in the mines and also from the fact that private insurance companies may select their risks. A crucial factor in assuring low workmen's compensation rates and adequate coverage of workers under any workmen's compensation law is safe working conditions. However, the New Mexico Act does not adequately assure that current safety practices will be enforced.

The New Mexico Act requires that employers provide reasonable safety devices in general use where no specific statutory provision can be used as a guide.[1] Since state statutes regulating safety are limited and none are in effect for the majority of New Mexico industries, the clause just cited in the New Mexico Act is applicable to most industries in New Mexico.

If an accident to a worker is caused by the employer's failure to provide safety devices, the worker's compensation for the injury is increased fifty percent. If the worker failed to use the safety devices provided by the employer, the compensation for the injury is reduced fifty percent.[2]

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[1] N.M. Stat. 1941, Sec. 57-907.

[2] Loc. cit.

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[1] N.M. Stat. 1941, Sec. 57-902.

[2] Ibid., 903.

There are several cases worth noting on the subject of safety devices. In Thwaits v. Kennecott Copper Corporation, the widow was awarded normal compensation plus fifty per cent because of the failure of the mine operators to provide proper safety devices. In this case a guard rail around the platform of the caboose, on an ore train, was held to be required by law.[2a] Lack of reasonable safety devices in general use for protection of water well driller's helper was found in Flippo v. Martin.[2b] This entitled Flippo to fifty per cent increase in his award. In Sallee v. Calhoun,[2c] the court held that "in action to recover compensation for death of employee in fire which occurred when employee attempted to load tank truck with gasoline, evidence sustained the finding that someone other than employee had opened or left open safety valves which were designed to prevent premature flow of gasoline into loading pipe and hose, and hence did not require fifty per cent reduction of compensation for failure of employee to use safety devices."[2d] In Jones v. International Minerals and Chemical Corporation, the court held that under the New Mexico Workmen's Compensation Act "providing for penalty against employer if injury or death of employee results from failure of employer to provide safety devices required by law, or in any industry in which safety devices are not provided by statute, for failure to supply reasonable safety devices in general use for use or protection of employee, use of safety electrical switch by one mining did not establish 'general use' where other two companies in same industry did not use same type of switch."[2e]

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2a Thwaits v. Kennecott Copper Corp., 52 N. M. 107 (1948).

2b Flippo v. Martin, 52 N. M. 402 (1948).

2c Salle v. Calhoun, 46 N. M. 468 (1942).

2d Ibid., p. 469

2e Jones v. International Minerals and Chemical Corp., 202 P. (2d) 1080, 53 N. M. 127.

There are several cases worth noting on the subject of safety devices. In *Thwaite v. Lackawanna Coke Corporation*, the widow was awarded nominal compensation plus fifty per cent because of the failure of the mine operators to provide proper safety devices. In this case a guard rail around the platform of the elevator, on an ore bunker, was held to be required by law. Lack of reasonable safety devices in general was for protection of water well drillers helper was found in *Fitzpo v. Pfeffer*.[23] This entitled Fitzpo to fifty per cent increase in his award. In *Smith v. Calumet*, the court held that "in action to recover compensation for death of employee in fire which occurred when employee attempted to load tank truck with gasoline, evidence sustained the finding that someone other than employee had opened or left open safety valves which were designed to prevent excessive flow of gasoline into loading pipe and hose, and hence did not require fifty per cent reduction of compensation for failure of employee to use safety devices."[24] In *Jones v. International Minerals and Chemical Corporation*, the court held that under the New Mexico Workmen's Compensation Act "providing for penalty against employer if injury or death of employee results from failure of employer to provide safety devices required by law, or in any industry in which safety devices are not required by statute, for failure to supply reasonable safety devices in general use for the protection of employee, use of safety electrical switch by one mining did not establish 'general use' where other ore companies in same industry did not use such type of switch."[25]

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[22] *Thwaite v. Lackawanna Coke Corp.*, 24 N. M. 307 (1918).

[23] *Fitzpo v. Pfeffer*, 24 N. M. 302 (1918).

[24] *Smith v. Calumet*, 24 N. M. 663 (1920).

[25] *Jones v. International Minerals and Chemical Corp.*, 240 P. 1080, 29 N. M. 347.

The problem of what determines whether or not a device is a reasonable device in general use would appear to be great. However, it is obvious that this provision is operating as a penalty for failure to provide safety devices. The Superintendent of Insurance is of the opinion that this clause assures a large degree of use of the proper safety devices.[3] Possibly it would be wiser to take certain measures to assure installation of the needed devices prior to injury than to attempt proper compensation after the damage to the worker has been done. On this matter the Labor Commissioner's office might be of aid.

The Labor Commissioner is given the power to inspect working places to see that proper safeguards for the workers are provided.[4] However, the difficulty with this clause is that no standard is established as a measure of safe working conditions. Inspection may take place. The inspector may declare a condition unsafe. If management disagrees, saying the condition is safe, there is nothing the inspector can do. The Labor Commissioner is of the opinion that a clear definition of a safe working condition should be given by an adequate safety law.[5]

The Labor Commissioner's opinion is in keeping with the recommendations of the Sixteenth National Conference on Labor Legislation. During this conference the Committee on Industrial Safety and Health recommended enactment by all states of a basic safety law giving the

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3 R. F. Apodaca, Superintendent of Insurance, Santa Fe, N.M., Interview, June 21, 1950.

4 N.M. Stat. 1941, Sec. 57-111.

5 A. E. Joiner, Labor Commissioner, Santa Fe, N.M., Interview, February 24, 1950.

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[4] N.M. Stat. 1941, Sec. 57-111.

[5] A. E. Jolner, Labor Commissioner, Santa Fe, N.M., Interview, February 24, 1950.

State Labor Department powers to make work places safe and power to draw up codes as a foundation for effective safety. Each state should provide advisory services to management and to labor and sufficient inspectors, hired by use of a merit system, to insure carrying through the program. Preventive measures should be stressed throughout this program.[6] The Committee also recommended the review and adoption by the states of the International Labour Organization Convention Number 81. Certain pertinent sections of this Convention are reproduced in the Appendix to this paper.

This Convention, passed July 11, 1947, deals quite extensively with the proper procedure for labor inspection in industry.[7] The functions of the system of labor inspection are to be to enforce laws relating to conditions of work such as safety, to supply information and advice to employers, and to notify the proper authority of defects or of abuses not specifically covered by law. Any further duties given labor inspectors shall not interfere with the effective discharge of their primary duties. Labor inspection is to be under the control of a central authority and this authority shall cooperate with other government agencies and with workers and employers.[8] The number of inspectors is to be sufficient to assure effective discharge of the duties of the

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[6] Resume of the Proceedings of the Sixteenth National Conference on Labour Legislation, op. cit., pp. 11-14.

[7] First Report of the International Labour Organization to the United Nations, Vol. II, International Labour Office (Geneva: La Tribune de Geneve, 1947), p. 245.

[8] Ibid., p. 246.

inspectorate, and transportation and offices are to be provided. The inspectors are to be allowed free access to plants tocarry out their examinations, are to have access to all necessary records, and are to be allowed to take samples of materials and substances if these are needed. The inspectors are to have the power to take the necessary steps for remedying the defects they uncover and are to be notified of industrial accidents and cases of occupational diseases.[9] Furthermore, the central inspection authority is to make annual reports dealing with the laws and regulations affecting the inspection service, statistics of work places and number of employees, inspection visits, of violations and penalties, of industrial accidents, and of occupational diseases.[10]

This recommended inspection procedure takes full cognizance of the fact that good laws may be readily invalidated by inadequate administration. Some of the recommendations of this Convention are being carried out in New Mexico. Reports of accidents and occupational diseases are made, but the thoroughness of these reports is questionable. Preventive regulation to assure safety is impossible because of the lack of legal regulatory provisions and because of the small size of the Labor Commissioner's staff. For two men to examine 10,757 businesses,[11] which is approximately the total number, in the fourth largest state having an area of approximately 122,000 square miles is an overwhelming

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[9] Ibid., pp. 247-248.

[10] Ibid., p. 251.

[11] Monthly Bulletin, Employment Security Commission of New Mexico, Albuquerque, New Mexico, April 1950, p. 3.

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task. The labor inspection program of New Mexico does not compare favorably with this Convention.

A simple but probably quite useful method to aid in keeping down accidents in mines is one now in use by the State Inspector of Mines. He makes a detailed report on every fatal accident which is mailed to all mine officials.[12] In this report the name of the dead worker and the location of the accident is given. The accident is then described. Responsibility for the accident is set forth, followed by recommendations to prevent the accident from occurring again either in that mine or elsewhere. The Inspector plans to do a similar study of non-fatal accidents in the near future. This program might be put into effect at little cost by all administrative officers of the state who handle accidental injuries.

Besides the possibility of increased compensation to the injured worker and the moral force of the Labor Commissioner's visit, two other groups exert a pressure on management for the improvement of worker safety. These are the insurance companies and the labor unions.

Insurance companies have the option of dropping undesirable risks. An employer can readily become such by following unsafe procedures. The past history of coal mines is a case in point. Usually insurance companies inspect establishments to see that they are following desired safety codes, and should the employer be unwilling to improve conditions, the threat of refusal to insure may cause a change of attitude.

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Insurance companies have the option of dropping undesirable risks. An employer can readily become such by ignoring unsafe practices. The past history of coal mines is a case in point. Usually insurance companies inspect establishments to see that they are following desired safety codes, and should the employer be unwilling to improve conditions, the threat of refusal to insure may cause a change of attitude.

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[12] John Garcia, Interview, June 12, 1950.

Labor union members have exerted pressure for improved safety conditions in the coal mines by refusal to work. This technique, together with aggressive efforts for safety could be used effectively by labor unions to bring reluctant employers to the realization of the need for safer working conditions. Unions might also actively engage in educating their members to be fully aware of what constitutes good and bad safety practices.

Generally, businessmen are as interested as any other group in achieving good working conditions. It is to their advantage to see that their employees are on the job and are working under safe conditions. It is for this reason that a good safety information bureau, able to provide the latest technical information, as well as legal provisions setting up a safety code for all to follow would be desirable. This sort of bureau would be required to carry through the recommendations the Convention supported.

Safety regulation under the New Mexico Workmen's Compensation Act cannot be effectively carried through. Preventive measures cannot be taken by the Labor Commissioner, if an employer refuses to cooperate on matters of safety. No provision exists for forcing safe conditions unless a worker is injured.

While the New Mexico Act deals briefly with safety, benefit provisions are set forth in detail, as Chapter V will attempt to show.

## CHAPTER V

## CASH BENEFITS UNDER THE NEW MEXICO WORKMEN'S COMPENSATION ACT

Workmen's compensation acts are based upon the doctrine of occupational risk, the principle being that the risk of economic loss through personal injury in the course of employment should be borne by the industry.[1] The cost of insurance against these economic losses is now considered a cost of production. The New Mexico Act is applicable only to industrial pursuits and its benefits are available only to workers whose employers are properly insured.

The accident must arise out of and in the course of employment, and if the worker is not killed the accident must result in loss or disability of a portion of the body. Since the Act in New Mexico is court administered, the determination of what constitutes injury arising out of and in the course of employment and of what constitutes loss or disability of a member has involved extensive litigation.

The New Mexico courts have taken the stand that the Workmen's Compensation Act should be construed liberally in favor of claimants, and hence the phrase "injury proximately caused by accident" should be liberally construed in favor of the workmen.[2] The Court has also held that the phrase "accidental injury" should be liberally construed, as for example, in the case of Barton v. Skelly Oil Company.[3] Unusual

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1 Analysis of Provisions of Workmen's Compensation Laws and Discussion of Coverages, op. cit., p. 3.

2 Stevenson v. Lee Moor Contracting Co., 45 N.M. 354 (1941).

3 Barton v. Skelly Oil Co., 47 N.M. 127 (1944).

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1 Analysis of Provisions of Workmen's Compensation Laws and Discussion of Insurance, op. cit., p. 3.

2 Sparkman v. Lea Motor Contractor Co., 45 N.M. 354 (1941).

3 Martin v. Eddy Oil Co., 47 N.M. 127 (1944).

hazards or extraordinary conditions are not necessary to an injury to be an "accidental injury under the compensation act."[4] Furthermore, it has been held that "accidental injury" under the Act may arise without the usually attending factors of narrow limits of time for the beginning and completion of the injury.[5] That is, the injury may result from factors extending well into the past and does not have to immediately follow an act.

In order for an injury to be compensable as "arising out of employment," the accident causing the injury must result from a risk reasonably incident to the employment. A risk common to the general public and not increased by employment will not fall under the Workmen's Compensation Act.[6] Furthermore, to collect compensation for an injury the worker must be on or about "premises occupied, and or controlled by the employer" or in any "place where employer's business required his presence."[7] Generally, where a salesman suffers a highway accident while traveling by automobile to or from a place where his duties require him to go, the accident "arises out of and in course of his employment."[8] Injuries to a printer's hands, resulting from the use of a soap furnished by the employer to which the printer was unknowingly

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[4] Webb v. New Mexico Publishing Co., 47 N.M. 279 (1943).

[5] Aranbula v. Banner Mining Co., 49 N.M. 253 (1945).

[6] Barton v. Skelly Oil Co., 47 N.M. 127 (1944).

[7] Olguin v. Thygesen, 47 N.M. 377 (1943)

[8] Southwestern Portland Cement Co. v. Simpson, 135 F. 2d 584 (1943).

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[5] Arambula v. Denver Mining Co., 49 N.M. 253 (1945).

[6] Barton v. Shelly Oil Co., 47 N.M. 127 (1944).

[7] Olmstead v. Jackson, 47 N.M. 277 (1943)

[8] Southwestern Portland Cement Co. v. Simmons, 135 P. 24 [illegible] (1943).

allergic, was compensable as the unintended result of an intentional act received while performing his labor and was a compensable "accident."[9] McKinney v. Dorlac illustrates that an auto accident suffered while following an imployer's direction may be compensable.[9a]

Diseases, under certain circumstances, are compensable. In the case of Stevenson v. Lee Moor pneumonia was held to be contracted by accident and therefore the injury was an accident.[10] However, silicosis is not held to be an accident as the term is used in the Workmen's Compensation Act.[11] This case also illustrates the division made by the court between accidental disease and occupational disease. An occupational disease is held to be one arising from causes incident to the profession or labor of the occupation. Its origin is in the inherent nature or mode of work and is the usual result or concomitant of causes and conditions that are normal and constantly present and known to be characteristic of the particular occupation.[12]

On the subject of what is involved in loss of a member the court has held that the specific instances listed in the law contemplate loss of members by amputation or loss of the use of a member either partially or totally, and the residuary clause "in all other cases" refers to disability resulting from injury to some portion of the body or usefulness of some physical function not mentioned in the schedule.[13]

The New Mexico Workmen's Compensation Act sets forth a schedule

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9 Webb v. New Mexico Publishing Co., 47 N. M. 279 (1943).

9a McKinney v. Dorlac, 48 N. M. 149 (1944).

10 Stevenson v. Lee Moor Contracting Co., 45 N. M. 354 (1941).

11. Aranbula v. Banner Mining Co., 49 N. M. 253 (1943).

12. Loc. cit.

13 Gonzales v. Pecos Valley Packing Co., 48 N. M. 185 (1944).

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The New Mexico Workmen's Compensation Act does form a separate

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9. Weeks v. New Mexico Publishing Co., 49 N.M. 8 (1945)

10. McKinney v. Jordan, 49 N.M. 346 (1945)

10. Stevenson v. Lar Mass Construction Co., 49 N.M. 346 (1945)

11. Armstrong v. Tonopah Mining Co., 49 N.M. 253 (1945)

12. Lee, ibid.

13. Gonzales v. Fence Rolling Machine Co., 49 N.M. 253 (1945)

to be followed in granting weekly or lump sum settlements for injuries. However, as noted in the preceding case, multiple injuries and injuries not listed in the schedule come within the residuary clause "in all other cases."[14] In cases involving injuries of these types the courts are allowed to use their discretion in deciding the extent of the injury and the compensable award to be made. Yet even in cases where the statute states the amount and the period for the award, courts have not followed this statutory limit because of the circumstances surrounding the injury and the complications which have resulted. The following decision is a case in point.

In Mathews v. New Mexico Light and Power Co. the court held that the fact that if disability arose through injury to a leg and loss of the use thereof, even under circumstances which would suggest the wisdom of amputation, such disability would not of itself limit liability to the scheduled 120 weeks for loss of a leg, if growing out of such injury and due to diseased and infected tissue and bone, general disability followed and the employee became totally and permanently disabled from performing any work for which he was suited.[15] This case illustrates that the statutory schedule of compensable awards is a flexible device and is not to be rigidly followed by the courts. It is contended that a claimant's attorney can secure for his client compensation in excess of the scheduled benefits by proving, for example, that

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[14] N.M. Stat. 1941, Sec. 57-918.

[15] Mathews v. New Mexico Light & Power Co., 46 N.M. 118 (1942).

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[14] N.M. Stat. 1941, Sec. 57-920.

[15] Mathews v. New Mexico Light & Power Co., 44 N.M. 113 (1940).

the loss of a hand by amputation actually has caused loss of the use of the entire arm.[16] The courts appear to take a very liberal view of the benefit provisions.

In discussing the statutory provisions of the New Mexico Workmen's Compensation Act, the author will contrast the Arizona Act with that of New Mexico. The Arizona Act was chosen for this purpose because it exhibits some unique features in its benefit schedule. Also, as previously stated the state of Arizona is comparable to New Mexico in size, density, and location. If any of the forty-seven other states approach the conditions found in New Mexico, Arizona does so. Thus Arizona would seem to be a sensible choice for a comparison. Furthermore, if one allows the statement that Arizona and New Mexico are similar, one may conclude that what has occurred in Arizona in the field of workmen's compensation might also occur in New Mexico. Therefore, the Arizona Workmen's Compensation Act might conceivably be used as a guide for rewriting the New Mexico Act. It is not the purpose here to try to prove the desirability or undesirability of the Arizona Act, although from the standpoint of the injured worker, Arizona's payments might be more desirable.

Both Arizona and New Mexico have a waiting period of seven days before compensation can be drawn. In New Mexico compensation is to begin on the eighth day but is not due or payable for the first seven days.[17] However, in Arizona if the injury continues for one week

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[16] Judge R. F. Deacon Arledge, Interview, June 14, 1950.

[17] N.M. Stat. 1941, Sec. 57-918.

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In discussing the structure provisions of the New Mexico Workmen's Compensation Act, the author will contrast the Arizona and New Mexico New Mexico. The Arizona Act was drawn for this purpose because it exhibits some unique feature in the benefit structure. Also, as previously stated the state of Arizona is comparable to New Mexico in size, density, and location. It may be the forty-seven other states specific the modifications found in New Mexico, mirror them so. This Arizona would seem to be a sensible choice for a comparison. Furthermore, it one allows the statement that adjacent one New Mexico are similar, one may conclude that what is considered in Arizona in the claim of workmen's compensation might also occur in New Mexico. Therefore, the Arizona Workmen's Compensation Act might conceivably be used as a guide for writing the New Mexico Act. It is not the purpose here to say the above the desirability or undesirability of the Arizona Act, although there the standpoint of the injured worker, Arizona's provisions might be more desirable.

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16 Judge R. P. Larson Arizona, Insurance, June 16, 1966.

17 N.M. Stat. 1953, Ann. 59-10-9.

TABLE VIII

DEATH BENEFITS PAYABLE UNDER WORKMEN'S COMPENSATION[18]

| Item | Limits on Amount N.M. | Limits on Amount Arizona | % of Average Wage N.M. | % of Average Wage Arizona | Duration N.M. | Duration Arizona |
|---|---|---|---|---|---|---|
| Burial | $250 plus medical and hospital bills | $150 plus Compensation | None | None | None | None |
| To widow | $25 maximum, $12 minimum, weekly (*) | No limit other than percentage | 40% | 35% | 300 weeks | Until death or remarriage. 2 years lump sum if remarriage occurs. |
| To widow or widower and children | As above | Not to exceed 66 2/3% of average wage weekly | 45% with one child; 5% increase each child up to 4 | Additional 15% for each child | 300 weeks | Until child is 18 years old or capable of self-support |
| Single surviving child or children | Not to exceed 60% or $25 a week, nor under $12 a week | As above | 25% with 10% for each additional | 25%; 15% for each additional | 300 weeks | Until child dies, marries, or is 18 years old, unless incapable of self-support |
| To parent | $25 maximum, $12 minimum, weekly | No limit other than percentage | 40% if totally dependent | 25% if wholly dependent; 15% additional for other parent | 300 weeks | Dependency |

TABLE VIII (Continued)

| Item | Limits on Amount N.M. | Limits on Amount Arizona | % of Average Wage N.M. | % of Average Wage Arizona | Duration N.M. | Duration Arizona |
|---|---|---|---|---|---|---|
| To parents | $25 maximum, $6 minimum, a week | As above | 20% if partially dependent | 15% divided evenly if both are partially dependent | 300 weeks | Dependency |
| To brothers or sisters under 18 years if none of the above exist | 60% of wage, not to exceed $25 a week or be under $12 | As above | 25% for one or two, with 10% additional in excess of two | 25% for one if wholly dependent. If over one, 35% of wage divided equally | 300 weeks | Until child is 18 years old |
| To partially dependent brothers or sisters | As above | As above | As above | 15% divided equally | 300 weeks | As above |
| Alien outside U. S. | Nothing stated | 60% of above schedule | Nothing stated | 60% of above schedule | Nothing stated | According to limits for resident dependents |
| Death of dependent | Nothing stated | $150 burial | Nothing stated | Not stated | Nothing stated | If died before expiration of award |
| No dependent surviving | Limited to $250 funeral and hospital bills | $1150 to State Treasury for Rehabilitation, Special Care, and Second Injury Funds | None | None | None | None |

TABLE XLIV (Continued)

| Item | Limits on amount | | % of wages made | | Limits on amount | |
|---|---|---|---|---|---|---|
| | M.M. | Nations | M.M. | Nations | M.M. | Nations |
| To benefit dependent | $25 maximum, no minimum a week | as above | 50% if dependent, 25% if not dependent | 75% if married, 50% if not married, 25% if no dependent | 100 weeks | dependency |
| To protect right of wife, where it exists, to receive $25 a week or more to the extent of the wife's right | as under $25 | as above | 50% for one or more dependents, 25% for one, if wife's right exceeds 25% | 75% for one if married, 50% if not married, 25% if no dependent | 100 weeks | until death or remarriage |
| To benefit dependent children of wife, where a child is entitled to receive $25 a week or more | $25 a week or more | as above | 50% | 75% if married, 50% if not married | 100 weeks | as above |
| Allied concepts | Monthly | 60% of wages | Monthly | 60% of wages | Monthly | According to length of service |
| U. S. [illegible] | [illegible] | adequate | [illegible] | adequate | [illegible] | [illegible] |
| Death of dependent | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| Remarriage | $250 maximum and no minimum | Amount not specified | $150 to $300 | Monthly | Monthly | If child per-[illegible] of marriage |

TABLE VIII (Continued)

| Item | Limits on Amount N. M. | Limits on Amount Arizona | % of Average Wage N.M. | % of Average Wage Arizona | Duration N.M. | Duration Arizona |
|---|---|---|---|---|---|---|
| If no dependents according to foregoing schedule the facts at time of injury will be considered. | Nothing stated | As itemized | Nothing stated on this subject | This item in the Arizona Code | Nothing | As itemized |

[18] Arizona Code 1939, Sec. 56-953. N.M. Stat. 1941, Sec. 57-918.

beyond the seven days, compensation shall be computed from the date of the injury.[19] The New Mexico law states that payments are to be no more than sixteen days apart.[20] On this point the Arizona Code appears to be silent.

In respect to death benefits payable under the two laws, the significant difference to be noticed is New Mexico's limitation of compensation to three hundred weeks, to fluctuate generally between twenty-five dollars as a maximum and twelve dollars as a minimum for weekly payments. No such statutory limit is apparent in the Arizona law. Furthermore, it is obvious from the preceding table that there is no standardization of amounts payable to various dependents. For example, a widow in New Mexico can get a larger percentage of the weekly pay of the deceased than can a widow in Arizona. However, in Arizona the widow gets her award until death or remarriage. In New Mexico the widow is limited to three hundred weeks. If she dies or remarries during this period her compensation ceases. Burial allowance is greater in the New Mexico statute than it is in the Arizona law. Generally speaking, given the current economic situation, the Arizona statute would appear to grant larger benefits to dependents in case of death. Furthermore, the guiding principle governing length of payments of the Arizona statute appears to be the need of the dependents. This does not appear to be true of the New Mexico statute, for here the arbitrary limit of three hundred weeks is set for all death benefits payable.

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[19] Arizona Code 1939, Sec. 56-961

[20] N.M. Stat. 1941, Sec. 57-918

beyond the seven days, compensation shall be computed from the date of the injury.[19] The Ohio laws are clearer: their provisions are to be no more than eleven days early.[20] At this point the research staff appears to be silent.

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[19] Arizona Code 1939, Sec. 56-926.

[20] N.M. Stat. 1941, Sec. 57-910.

The New Mexico statute, in setting a limit on the number of weeks compensation can be paid for death, resembles that of the majority of states, for thirty-two other states have set such a limit. This limit ranges from three hundred to six hundred weeks, with eight states besides New Mexico having the three hundred week limit. Fifteen states have no specified limit, Arizona being one of these.[21] Arizona is the only state not setting a numerical limit on the weekly sum payable.[22] Furthermore, Arizona is one of the fourteen states having a rehabilitation program for the industrially disabled. All states have, however, accepted the provisions of the Federal Vocational Rehabilitation Act.[23] This permits some aid for injured employees in states without specific provisions on the subject. Another distinctive feature of the Arizona act is its statutory provision for payment of benefits to aliens, as can be seen from the table. Many states may have no need for such a provision, but it shows Arizona's adjustment to her particular set of sociological factors.

Arizona also has enacted a provision for a "second injury" fund. This type of provision is generally believed to be of benefit to both worker and employer. A "second injury" fund is a fund out of which workers are paid who have received a second injury at a later date which together with the first results in total and permanent disability. For

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[21] Analysis of Provisions of Workmen's Compensation Laws and Discussion of Coverages, op. cit., p. 18.

[22] Ibid., p. 19.

[23] Ibid., p. 15.

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21 Analysis of Provisions of Workmen's Compensation Laws and Discussion of Problems, op. cit., p. 18.

22 Ibid., p. 19.

23 Ibid., p. 32.

example, if a man has lost one arm and has been compensated for this partial disability and later loses his second arm on another job the second employer must pay compensation to the man. However, this is paid on the basis of permanent partial disability for the loss of one arm. The "second injury" fund pays the difference between the partial disability resulting from the second injury and the total disability which has resulted from both injuries. In the absence of statutory exception, the employer in whose employ the second injury occurred ordinarily is liable for compensation for the total disability.[24] This factor may influence an employer against hiring a handicapped worker. A majority of compensation laws how have provisions limiting the liability of the employer in certain cases to payment for disability resulting from the second injury only.[25] A number of these states, as Arizona, have created second injury funds that pay the additional compensation due for the combined result of both injuries. The enactment of additional "second injury laws" is regarded by many as at least a practical solution of the problem of re-employment of handicapped workers.[26] New Mexico has no such fund, but the statute does limit the employer's liability in the case of a second injury, but this creates an injustice to the employee so injured.[27]

Benefits for permanent total disability vary greatly from state to state as do the death benefits. The table on permanent total

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[24] Analysis of Provisions of Workmen's Compensation Laws, op.cit. p. 14.

[25] Ibid., p. 15.

[26] Ibid., p. 15.

[27] N.M. Stat. 1941, Sec. 57-918.

example, if a man has lost one arm and has been compensated for this partial disability and later loses his second arm on another job the second employer must pay compensation to the man. However, this is paid on the basis of permanent partial disability for the loss of one arm.

The "second injury" fund pays the difference between the partial disability resulting from the second injury and the total disability which has resulted from both injuries. In the absence of statutory exception, the employer in whose employ the second injury occurred ordinarily is liable for compensation for the total disability.[24] This factor may influence an employer against hiring a handicapped worker. A majority of compensation laws now have provisions limiting the liability of the employer in certain cases to payment for disability resulting from the second injury only.[25] A number of these states, as Arizona, have created second injury funds that pay the additional compensation due for the combined result of both injuries. The amendment of additional "second injury funds" is regarded by many as at least a practical solution of the problem of re-employment of handicapped workers.[26] New Mexico has no such fund, but the statute does limit the employer's liability in the case of a second injury, but this creates an injustice to the employee so injured.[27]

Benefits for permanent total disability vary greatly from state to state as do the death benefits. The table on permanent total

24 Analysis of Provisions of Workmen's Compensation Laws, op cit. p. 14.

25 Ibid., p. 15.

26 Ibid., p. 15.

27 N.M. Stat. 1941, Sec. 57-912.

TABLE IX

BENEFITS FOR PERMANENT TOTAL AND TEMPORARY TOTAL DISABILITY[28]

| | Limit on Amount | % of Aver. Wage | Duration |
|---|---|---|---|
| **Permanent Total Disability** | | | |
| New Mexico | Not to exceed $25 or to be under $12 a week.(*) | 60% | 550 weeks |
| Arizona | None | 65% | Lifetime |
| **Temporary Total Disability** | | | |
| New Mexico | Not to exceed $25 or to be under $12 a week.(*) | 60% | 550 weeks |
| Arizona | None | 65%. If dependents, an additional $10 a month. | 433 weeks |

(*) Full wage of worker if less than $12 a week.

[28] Arizona Code 1939, Sec. 56-956.
N.M. Stat. 1941, Sec. 57-918.

disability shows the variation between New Mexico and Arizona. It would appear from the Arizona statute that a worker in that state would secure greater compensation benefits for a similar or identical injury resulting in total disability than a worker in New Mexico.

The Arizona statute sets out what may be considered in deciding total and permanent disability. The Arizona law states that, in the absence of contrary evidence, disability is considered total and permanent if caused by: 1) the permanent loss of sight in both eyes; 2) loss by separation of both feet; 3) loss by separation of both hands; 4) spinal injury resulting in complete paralysis of both legs or both arms, or one leg and one arm; 5) a skull injury causing insanity or imbecility; 6) loss by separation of one hand and one foot. The law further states the above enumeration is not to be considered exclusive. Other cases are to be determined according to fact.[29]

The New Mexico statute makes a similar declaration. Paralysis of any member, if permanent and complete, is to be considered equivalent to loss thereof. Also, the loss of both hands, arms, feet, legs, eyes or any two thereof, in absence of conclusive proof to the contrary, shall constitute total permanent disability. In all other cases in this class where the usefulness of a member is permanently impaired, compensation shall bear such relation to the amounts stated in the above schedule as the disabilities bear to those produced by injuries named in the schedule.[30]

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[29] Arizona Code, 1939, Sec. 56-956.

[30] N.M. Stat. 1941, Sec. 57-918.

disability shows the variation between New Mexico and Arizona. It would appear from the Arizona statute that a worker in that state would secure greater compensation benefits for a similar or identical injury resulting in total disability than a worker in New Mexico.

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[29] Arizona Code, 1939, Sec. 56-956.

[30] N.M. Stat. 1941, Sec. 57-916.

TABLE X

BENEFITS FOR PERMANENT PARTIAL DISABILITY[31]

| Loss of: | Limit in Amount N.M. | Limit in Amount Arizona | % of Average Wage N.M. | % of Average Wage Arizona | Duration N.M. | Duration Arizona |
|---|---|---|---|---|---|---|
| Thumb | $25 a week max., $12 week min. | No limit other than percentage | 60% | 55% of wage in addition to comp. for temporary total disability | 20-50 weeks depending on part lost | 15 months |
| First finger | " | " | " | " | 10-25 weeks | 9 months |
| Second finger | " | " | " | " | 8-20 weeks | 7 months |
| Third finger | " | " | " | " | 8-15 weeks | 5 months |
| Fourth finger | " | " | " | " | 6-12 weeks | 4 months |
| Distal or second phalange of thumb, distal or third phalange of any finger | As above | As above | As above | As above | Item is the minimum benefit in above schedule | Shall be ½ the loss of thumb or finger & ½ amount specified above. |
| More than one phalange of thumb or finger | " | " | " | " | Item included in above schedule | Loss of entire thumb or finger & so compensated. Not to exceed amt. for loss of hand. |
| Great toe | " | " | 60% | 55% | 10-30 weeks | 7 months |
| Toe other than great | " | " | 60% | 55% | 6-12 weeks | 2½ months |

TABLE X

BENEFITS FOR PERMANENT PARTIAL DISABILITY[21]

| Loss of: | Limit in Amount | | % of Average Wage | | Duration | |
|---|---|---|---|---|---|---|
| | N.M. | Arizona | N.M. | Arizona | N.M. | Arizona |
| Thumb | $25 a week max., $12 week min. | No limit other than percentage | 60% | 55% of wage in addition to comp. for temporary total disability | 20-30 weeks depending on part lost | 15 months |
| First finger | " | " | " | " | 10-25 weeks | 9 months |
| Second finger | " | " | " | " | 8-20 weeks | 7 months |
| Third finger | " | " | " | " | 8-15 weeks | 5 months |
| Fourth finger | " | " | " | " | 6-12 weeks | 4 months |
| Metal or second phalange of thumb, index, or third phalange of any finger | As above | As above | As above | As above | Item in the minimum bene- fits in above schedule | Shall be ½ the loss of thumb or finger ¾ amount specified above. |
| More than one phalange of thumb or finger | " | " | " | " | Item listed in above schedule | Loss of entire thumb or finger ¾ so compensated. Not to exceed amt. for loss of hand. |
| Great toe | " | " | 60% | 55% | 10-20 weeks | 7 months |
| Toe other than great | " | " | 60% | 55% | 6-12 weeks | 2½ months |

TABLE X (Continued)

| Loss of: | Limit in Amount N.M. | Limit in Amount Arizona | % of Average Wage N.M. | % of Average Wage Arizona | Duration N.M. | Duration Arizona |
|---|---|---|---|---|---|---|
| First phalange of any toe | $25 a week max., $12 week min. | No limit other than percentage | 60% | 55% | Item included as minimum benefit above | ½ loss of toe and so compensated |
| More than one phalange of any toe | " | " | 60% | 55% | Item included above | Loss of entire toe |
| Major hand | " | " | 60% | 55% | 110 weeks | 50 months |
| Minor hand | " | " | 60% | 55% | 100 weeks | 40 months |
| Major arm | " | " | 60% | 55% | 140-180 weeks, dep. on portion lost | 60 months |
| Minor arm | " | " | 60% | 55% | 130-160 weeks, dep. on portion lost | 50 months |
| Foot | " | " | 60% | 55% | 100 weeks | 40 months |
| Leg | " | " | 60% | 55% | 120-180 weeks | 50 months |
| Eye by enucleation | " | " | 60% | 55% | 125 weeks | 30 months |
| Sight in one eye without enucleation | " | " | 60% | 55% | 110 weeks | 25 months |
| Complete loss of hearing, permanently in one ear | " | " | 60% | 55% | 35 weeks | 20 months |
| Both ears, permanent and complete loss of hearing | " | " | 60% | 55% | 135 weeks | 60 months |

TABLE X (Continued)

| Loss of: | Limit in Amount | | % of Average Wage | | Duration | |
|---|---|---|---|---|---|---|
| | N.M. | Arizona | N.M. | Arizona | N.M. | Arizona |
| First amputation of any toe | $25 a week max., $12 week min. | No limit other than percentage | 60% | 55% | Item included as minimum benefit above | ½ loss of toe and so compensated |
| More than one amputation of any toe | " | " | 60% | 55% | Item included above | Loss of another toe |
| Major hand | " | " | 60% | 55% | 110 weeks | 50 months |
| Major hand | " | " | 60% | 55% | 100 weeks | 40 months |
| Major arm | " | " | 60% | 55% | 120-150 weeks, depending on portion lost | 60 months |
| Minor arm | " | " | 60% | 55% | 100-120 weeks, depending on portion lost | 50 months |
| Foot | " | " | 60% | 55% | 100 weeks | 50 months |
| Leg | " | " | 60% | 55% | 120-150 weeks | 50 months |
| Eye by enucleation | " | " | 60% | 55% | 112 weeks | 50 months |
| Sight in one eye without equivalent | " | " | 60% | 55% | 110 weeks | 25 months |
| Complete loss of hearing, partial hearing in one ear | " | " | 60% | 55% | 35 weeks | 40 months |
| Both ears, partial hearing and one ear | " | " | 60% | 55% | 125 weeks | 50 months |

TABLE X (Continued)

| Loss of: | Limit in Amount N.M. | Limit in Amount Arizona | % of Average Wage N.M. | % of Average Wage Arizona | Duration N.M. | Duration Arizona |
|---|---|---|---|---|---|---|
| Permanent and complete loss of use of hand, arm, finger, toe, foot, etc. | No statement | As given above | No statement | As given above | Not so stated in N.M. law | Same as loss of the item thru separation |
| Partial loss of use of a finger, toe, etc., or partial loss of sight or hearing | No statement | " | " | 50% | Not stated in N.M. law | Portion of the no.of months in the foregoing schedule, which the partial loss of use bears to total loss. |
| Permanent total disfigurement | $ 750 | Commission to decide | None given | Commission to decide | Court may award up to $750 | Whatever sum the commission sees fit to offer for 18 months only. |
| Loss of all fingers on one hand where thumb and palm remain | $12-$25 a week | No statement | 60% | No statement | 55 weeks | Not stated as such |
| When worker is disabled by infection | As above | " | To be within limits provided | " | Compt. to be paid for loss of wages within limits otherwise provided | Not stated in Arizona statute |

[31] Arizona Code, 1938, Sec. 56-957. N.M. Stat. 1941, Sec. 57-918.

TABLE X (Continued)

| Loss of | Limit in Amount | | % of Average Wage | | Duration | |
|---|---|---|---|---|---|---|
| | N.M. | Arizona | N.M. | Arizona | N.M. | Arizona |
| Permanent and complete loss of use of hand, arm, finger, toe, foot, etc. | No statement | As given above | No statement | As given above | Not so stated in N.M. law | Same as loss of the item thru separation |
| Partial loss of use of a finger, toe, etc., or partial loss of sight or hearing | No statement | " | " | 50% | Not stated in N.M. law | Portion of the no. of months in the foregoing schedule, which the partial loss of use bears to total loss. |
| Permanent total disfigurement | $ 750 | Compensation to decide | None given. | Compensation to decide | Court may award whatever was the sum it also was fit to offer for 18 months only. | |
| Loss of all fingers on one hand were thumb and pain remain | $12½/25 a week | No statement | 60% | No statement | 55 weeks | Not stated as such |
| When worker is disabled by infection | As above | " | To be within limits provided | " | Compt. to be paid for loss of wages within limits provided | Not stated in Arizona statute |

[1] Arizona Code, 1928, Sec. 56-957. N.M. Stat. 1941, Sec. 57-918.

The table showing benefits for temporary total disability indicates that New Mexico fails to make the distinction Arizona does between permanent and temporary total disability. New Mexico provides for benefits to last 550 weeks or for the duration of disability in both cases. Arizona has limited temporary total disability to 433 weeks.

Benefits for permanent partial disability also vary greatly from one state to another. In the preceding table it can be seen that New Mexico allows the greater percentage of weekly salary, providing compensation does not exceed twenty-five dollars a week, while the Arizona law provides the greater length for benefit payments.

The New Mexico law makes a finer distinction on what constitutes the loss of a portion or all of the finger, hand, or toe than does the Arizona law. However, the Arizona law states that loss of use of a finger or other member constitutes loss of the member. This is not too well clarified in the New Mexico law. The New Mexico law does state that permanent and complete paralysis of any member constitutes loss thereof, but a case of temporary paralysis or permanent partial paralysis of a member is not so defined.

For temporary partial disability, the Arizona Code permits a payment not to exceed sixty months of sixty-five percent of the difference between wages earned before injury and those earned thereafter.[32] Further, the law states that in cases not listed among those included in the table where injury causes partial disability, the employee shall receive during the disability compensation equal to fifty-five

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[32] Arizona Code, 1939, Sec. 56-957.

The table showing benefits for temporary total disability indicates that New Mexico fails to make the distinction Arizona does between permanent and temporary total disability. New Mexico provides for benefits to last 520 weeks or for the duration of disability in both cases. Arizona has limited temporary total disability to 425 weeks.

Benefits for permanent partial disability also vary greatly from one state to another. In the preceding table it can be seen that New Mexico allows the greater percentage of weekly salary, providing compensation does not exceed twenty-five dollars a week, while the Arizona law provides the greater length for benefit payments.

The New Mexico law makes a finer distinction on what constitutes the loss of a portion or all of the finger, hand, or toe than does the Arizona law. However, the Arizona law states that loss of use of a finger or other member constitutes loss of the member. This is not too well clarified in the New Mexico law. The New Mexico law does state that permanent and complete paralysis of any member constitutes loss thereof, but a case of temporary paralysis or permanent partial paralysis of a member is not so defined.

For temporary partial disability, the Arizona Code permits a payment not to exceed sixty months of sixty-five percent of the difference between wages earned before injury and those earned thereafter.[22] Further, the law states that in cases not listed among those included in the table where injury causes partial disability, the employee shall receive during the disability compensation equal to fifty-five

[22] Arizona Code, 1939, Sec. 56-907.

percent of the difference between his average monthly wages before the accident and the wage he is able to earn thereafter. However, the payment shall not continue after the disability ends, and if the partial disability begins after a period of total disability, the total disability period shall be deducted from the total period of compensation.[33]

The Arizona code states that in determining the percentage of disability, consideration shall be given to any previous disability, the occupation of the worker, the nature of physical injury, and age of the employee at the time of injury. In cases of previous disability, the percentage of entire disability shall be computed and the percentage of previous disability shall be deducted from it.[34]

On these last mentioned points, the Arizona law gives a more complete explanation of how to determine the extent and type of injury and how to determine the awards to be made. The New Mexico law has no similar provisions. The courts in this state must interpret the intent on these points if interpretation is desired.

Generally, the Arizona Workmen's Compensation Law provides for greater monetary benefits to the worker for injury received, especially under present economic conditions, than does the New Mexico Act. Further, the Arizona law relies upon a commission for administration of awards. New Mexico relies upon its court system. Experts in the field of labor administration generally have tended to favor the commission type of administration, believing this system to be less expensive to

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[33] Loc. cit.

[34] Loc. cit.

percent of the difference between his average monthly wages before the accident and the wage he is able to earn thereafter. However, the payment shall not continue after the disability ends, and if the partial disability begins after a period of total disability, the total disability period shall be deducted from the total period of compensation.[33]

The Arizona code states that in determining the percentage of disability, consideration shall be given to any previous disability, the occupation of the worker, the nature of physical injury, and age of the employee at the time of injury. In cases of previous disability, the percentage of entire disability shall be computed and the percentage of previous disability shall be deducted from it.[34]

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[33] Loc. cit.

[34] Loc. cit.

both employer and employee and giving more chance for expert personnel to be employed.

In comparing these two laws and examining those of other states, one is struck by the wide variation and lack of uniformity in the different codes on workmen's compensation. These variations may be the result of different factors within the different states. However, there probably is no significant basis for the wide variation. It would appear possible, if a state were interested in providing awards consistent with the economic status of the worker, for a scientific study to be undertaken to determine what would constitute a fair standard of living for a worker and to determine then what would be a fair compensation schedule for various injuries. After this had been determined, insurance rates required for this desired level could be computed on the basis of current experience. The impact of these rates and their effects on business in the area could then be evaluated. The total program could then be weighed in terms of desired ends and the cost of achieving these ends.

The wide variety of benefit provisions would seem to indicate that no scientific investigation of needs and costs was ever made. The point remains that most states do not provide weekly benefits adequate for maintaining an injured worker and his family. This is true of New Mexico. Possibly New Mexico never had any intention of doing this. If so, the state is not abiding by the theory that insurance against the inherent risks of industry should be made a cost of production. The cost of such risks is only partially included as a cost factor.

In New Mexico an injured worker can receive at best twenty-five dollars a week for a given period. Assuming prompt and continuous payments to the injured worker, he could receive only $1300 in one year. In a study conducted by the Bureau of Labor Statistics of the Department of Labor to measure and describe a modest but adequate standard of living for a family of four, the total sum required was significantly above this figure. The city worker's family budget for four persons for goods and services in June 1947 ranged from an annual rate of $2,734 in New Orleans to an annual rate of $3,111 in Washington, D. C.[35] The cost of living in Albuquerque, New Mexico probably would fall between the extremes of $2,700 and $3,100 for this period. This budget did not provide luxuries. It included those items needed for an adequate standard of living. If workers are to have an adequate standard of living during disability, the head of a household of four would need approximately $50 a week - double the current New Mexico benefits. The wholesale price index on April 19, 1947 was 147.2 using 1935-1939 as 100.[36] For June 1949 it was 169.2, and for June 1950, 167.3, using the period 1935-1939 as a base of one hundred.[37] The price index would indicate that a worker needs more money today than he did in 1947 for the same standard of living. It would not be incorrect to assume that a one hundred percent increase in workmen's compensation benefits would

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[35] Lester S. Kellogg and Dorothy S. Brady, "The City Worker's Family Budget", Monthly Labor Review, Vol. 66, February 1948, p. 152.

[36] S. Robert Mitchell, "New Wholesale Price Index", Monthly Labor Review, Vol. 67, September 1948, p. 293.

[37] Business Week, July 8, 1950, p. 13.

In New Mexico an injured worker can receive at best twenty-five dollars a week for a given period. Assuming prompt and continuous payments to the injured worker, he could receive only $1300 in one year. In a study conducted by the Bureau of Labor Statistics of the Department of Labor to measure and describe a "decent but adequate standard of living" for a family of four, the total sum required was significantly above this figure. The city worker's family budget for four persons for goods and services in June 1947 ranged from an annual rate of $2,724 in New Orleans to an annual rate of $3,111 in Washington, D. C.[35] The cost of living in Albuquerque, New Mexico probably would fall between the extremes of $2,700 and $3,100 for this period. This budget did not provide insurance. It included those items needed for an adequate standard of living. If workers are to have an adequate standard of living during disability, the need of a household of four would need approximately $50 a week - double the current New Mexico benefits.

The wholesale price index on April 15, 1947 was 147.8 using 1935-1939 as 100.[36] For June 1949 it was 169.2, and for June 1950, 187.3, using the period 1935-1939 as a base of one hundred.[37] The price index would indicate that a worker needs more money today than he did in 1947 for the same standard of living. It would not be incorrect to assume that a one hundred percent increase in workmen's compensation benefits would

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[35] Lester S. Kellogg and Dorothy S. Brady, "The City Worker's Family Budget", Monthly Labor Review, Vol. 64, February 1948, p. 182.

[36] S. Joseph Mitchell, "New Wholesale Price Index", Monthly Labor Review, Vol. 67, September 1948, p. 297.

[37] Business Week, July 8, 1950, p. 15.

be needed for adequate support for a family of four in Albuquerque, New Mexico.

To illustrate the problems of an injured worker, consider the actual case of Mr. A. He is approximately 24 years old, a journeyman in his trade and a union member. He has a wife and two children. About two years ago he was injured when a ditch caved in on him while he was burning pipe. He was badly burned by the torch he was using and to this day has been unable to work. Doctors are still attempting to graft skin over the many burned areas on the man's body. He has been under medical care since the injury. The insurance company has paid his medical bills and is paying him $22.50 a week. This is the maximum sum it was possible to award him at the time he was injured.

After the injury, Mr. A's wife had to take a part time job. The parents of the couple have contributed to the support of the family. The business manager of the union has engaged a lawyer for the man, should one be needed later.[38] This family has received, exclusive of doctor bills, $1,170 a year, considerably below the yearly wage needed for an adequate standard of living. Furthermore, the family has had to get aid from the parents on both sides of the family and the wife has been required to work part time. Mr. A. and his family have not received benefits in keeping with the philosophy of workmen's compensation. They have had to bear part of the burden themselves and have had to rely partly upon their parents. The cost of this injury was not completely

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[38] John McDowell, Assistant Business Manager, Plumbers' and Steamfitters' Local No. 412, Interview, June 8, 1950.

be needed for adequate support for a family of four in Albuquerque, New Mexico.

To illustrate the problems of an injured worker, consider the actual case of Mr. A. He is approximately 34 years old, a journeyman in the trade was a skilled worker. He was injured in a fall on the scaffold two years ago as was trying when a fiber rope in on him while he was burning pipe. He was badly burned by the torch he was using and to this day has been unable to work. Doctors are still attempting to graft skin over the many burned areas of the about body. He has been under medical care since the injury. The insurance company has paid his medical bills and is paying him $20.00 a week. This is the maximum one is was possible to award him at the time he was injured.

After the accident, Mr. A's wife had to take a part time job. The parents of the couple have contributed to the support of the family. The business manager of the union has engaged a lawyer for the case, should one be needed later.[38] This family has received, including the doctor bills, $1,200 a year, considerably below the amount was needed for an adequate standard of living. To survive, the family has had to get aid from the parents on both sides of the family and the wife has been required to work part time. Mr. A. and his family have not received benefits in keeping with the philosophy of workmen's compensation. They have had to bear part of the burden themselves and have had to rely partly upon their friends. The cost of this injury was not completely

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[38] John McDonald, Assistant Business Manager, Plumbers and Steamfitters' Local No. 412, Albuquerque, June 8, 1970.

included in production cost.

New Mexico's law permits lump sum settlements to the injured worker.[39] From the worker's point of view this policy may be desirable at the time but it has a tendency to deny the worker full benefits under the law. Those examining the law from the claimant's point of view generally condemn lump sum settlements for two reasons: 1) they are generally less than would otherwise be received; 2) they are spent hastily or wasted, as the claimant seldom has business skill and fails to invest his money wisely.

Seventy-three cases for claims under workmen's compensation were filed in the office of the Clerk of the District Court, District Two, located in Albuquerque, during the period August 25, 1948 to September 14, 1949. Of these, fifty-eight had been settled as of November 1949. Six of the settled cases had been dismissed, leaving a total of fifty-two involving payment. Of these fifty-two, in only one was the final settlement for a continuing payment. The remaining fifty-seven were final settlements for lump sums. Some of these involved weekly payments prior to settlement, but in all but one a final settlement in lump sum was made. The desirability of this as previously shown from the worker's point of view is doubtful. However, many interested parties think that in view of the meagreness of the weekly allowance in New Mexico a lump sum will offer a fairly decent living for part of the disability period at least. If an allowance adequate for the support of a family of four were permitted with provisions for continuing payments

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[39] N.M. Stat. 1941, Sec. 57-925.

only, the New Mexico Act would be more in keeping with its ostensible objectives.

The schedule of benefits provided for specific injuries is extremely limited, considering the many types of injuries a worker can suffer. Since the law is court administered, the non-scheduled injuries appear to be the type most frequently taken before the bar. The courts, as has already been seen, are to take a liberal attitude in interpreting the law and consequently injuries not listed in the law and of questionable status are generally compensated. The setting of the amounts for these injuries is also a court privilege and it is in this area that great variation occurs from judge to judge and from case to case. This aspect of the administration of New Mexico's law will be examined later.

Generally, the initial payment of benefits under the New Mexico Act is prompt, providing the insurer feels the accident is compensable. No data or opinions have been uncovered to show that insurance companies lag in paying the injured worker his initial benefits.

Dependency benefits are subject to the same criticism from the worker's viewpoint as are disability benefits. All those who are dependents appear to be able to get compensation, even though meagre in amount. There has been no litigation on the question of whether or not dependents are being excluded from getting aid under the law when they might possibly be entitled to it. However, a common law wife is excluded from receiving benefits, for New Mexico law fails to recognize common law marriage.[39a] This aspect of New Mexico law excludes many

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39a On this, see Gabaldon v. Gabaldon, 38 N. M. 392 (1943).

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[70] On this, see Gabaldon v. Industrial, 32 N. M. 292 (1924).

widows in fact. In cases of this nature, children of such marriages may be granted benefits but not the mother.[40]

Cash benefits under the New Mexico Act have been found to be meagre. However, they are small because of statutory limitation and not because New Mexico courts have restricted the applicability of the Act. Possibly this section of the New Mexico Act needs revision before any other. It is probably impossible for a worker to keep his family at even a subsistence level on the current weekly benefits awarded under the New Mexico Act.

It may be questioned in view of what has been learned about vocational rehabilitation whether it is wise policy to grant total disability in the event of the loss of both hands, both feet, and so forth. The individual and society will be better off if the man goes back to work. The New Mexico law could be amended to encourage safety and the most rapid rehabilitation.

The next chapter will examine medical benefits under the New Mexico Act. These payments, unlike benefit payments, would be adequate provided the statute were followed properly.

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[40] Judge R. F. Deacon Arledge, Interview, June 14, 1950.

## CHAPTER VI

## MEDICAL CARE

The medical care provisions of the New Mexico Workmen's Compensation Act, unlike the benefit clauses, compare favorably to those of any ideal legislation. Medical expenses of an injured worker whose employer has elected to come under the Workmen's Compensation Act are the responsibility of the employer or his insurer. The statute states that all medical expenses up to seven hundred dollars are to be paid for each injury. However, this limit is of little significance. If the worker exceeds this amount in his medical expenses, he may apply to the court for approval of the excess. If these additional expenses are reasonable, the employer or his insurer is required to pay them also.[1] This clause amounts to unlimited medical benefits for a work injury. From material gathered in interviews it appeared that most insurance companies have paid the excess over seven hundred dollars without having the worker go through the above legal formality. Generally, the insurance companies appear to spend as much as is necessary for treatment of the worker's injury. The companies seem to desire that the worker be back on the job as soon as is possible.[2]

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[1] N. M. Stat. 1941, Sec. 57-919.

[2] Judge R. F. Deacon Arledge, Interview, June 14, 1950.

## CHAPTER VI

## MEDICAL CARE

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[1] N. M. Stat. 1941, Ann. 57-929.

[2] Judge E. P. Pearson Arledge, Interview, June 14, 1950.

prove that: 1) the hernia is of recent origin, 2) that its appearance was accompanied by pain, 3) that it was immediately preceded by some accidental strain, and 4) that it did not exist prior to the date of the alleged injury.[3] The important aspect of this clause for court cases is the proving that the hernia did not exist prior to date of injury. In court interpretation, unless the employer can show that the worker had a hernia before the injury date, the presumption is made that the worker was injured as he claims.[4] Thus in the actual operation of the law it appears that establishing compensability for hernia is relatively simple. The importance of pre-employment medical examination of the worker to determine the presence or absence of hernia for the employer's protection can be easily seen.

In some states labor unions have objected to the pre-employment medical examinations required in many industries. However, in New Mexico no united disapproval on the part of labor is to be found. In fact, in questioning individuals on this point, the author found that there was practically no objection whatsoever. An occasional irritation with a particular procedure or doctor has been noted, but workers in this state generally appear to have few complaints about these examinations.[5]

In some states pre-employment examinations are apparently kept

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[3] N. M. Stat. 1941, Sec. 57-918.

[4] Arledge, loc. cit.

[5] Earl J. McDonald, Secretary-Treasurer, New Mexico State Federation of Labor, Letter to Author, June 14, 1950.

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[4] Bridge, Loc. cit.

[5] Earl L. Trujillo, Secretary-Treasurer, New Mexico State Federation of Labor, Letter to Author, June 14, 1950.

secret, to a degree, from the worker and the employee fails to be informed of the report. From all indications this does not occur in New Mexico.[6] These medical examinations may be used by the employer to try to prove the presence of hernia but are not kept secret from the employee and are not generally used against the worker's interests.[7]

The New Mexico law requires medical examination during the compensable period. The law states that "any employer or insurer shall be entitled to have a physical examination of the claimant by a physician of its choice before or after the filing of a claim in the district court or before or after an award . . . ."[8] Certain regulations are imposed. The claimant is to be notified in writing at least ten days before the examination; he is to be examined by a physician qualified to practice under state law, and the place shall be reasonably accessible. Also, the claimant shall be compensated for travel expenses; he may not be examined more frequently than once every six months unless good cause is shown; he may have a doctor or lawyer of his own choice present at the examination, and he shall be given a copy of the report.[9]

This clause would appear reasonable for all parties involved, but in actual operation it is conceivable that some friction might be created between claimants and doctors. However, this is apparently not

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[6] McDonald, loc. cit.

[7] Arledge, loc. cit.

[8] N. M. Stat. 1941, Sec. 57-920.

[9] Loc. cit.

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[6] Redmond, loc. cit.

[7] Arledge, loc. cit.

[8] N. M. Stat. 1941, Sec. 57-903.

[9] Loc. cit.

the case to any great extent. Workers do feel that some doctors who examine them are not interested in their welfare.[10] To what extent this feeling exists is unknown. No unified discontent is apparent. The court might be allowed to appoint the doctor in disputed claims. This would probably alleviate the current discontent.

At this point it might be wise to examine the methods by which injured workers receive treatment and the methods used in handling these claims. For this purpose Lovelace Clinic, Albuquerque, New Mexico, will be used. The point should be made in the beginning that no effort is made to prove that this is the typical manner in which injured workers are treated. However, this might be an argument for group medical practice rather than a justification of the manner in which these cases are handled in the state as a whole. It is the author's opinion that probably the Lovelace Clinic handles worker injuries as well as, or better than, any other group of doctors in the state, partly because this clinic receives so many such cases and also because of the fact that here the doctors are given ample opportunity for specialization.

Lovelace Clinic receives about forty cases a week under the Workmen's Compensation Act.[11] This is a relatively small proportion of the total cases handled by the Clinic. About fifty percent of the workmen's compensation cases are serious injuries requiring treatment

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[11] Mrs. Cook, Compensation Clerk, Lovelace Clinic, Albuquerque, New Mexico, Interview, June 19, 1950.

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over at least a seven-day period. The remainder are handled in less than seven days and these probably receive little if any weekly benefits under workmen's compensation, as they are soon back to work.

In approximately ninety percent of the cases, medical expenses are promptly paid by the insurer.[12] In some cases payment has been delayed by the employer going out of business before the accident is reported. In all cases where the medical expenses are not paid by the employer or insurer, no effort is made to collect from the worker. Under no circumstances does the Clinic look to the worker for payment.[13]

The Clinic has no doctor that specializes in compensation cases and probably none is needed. Orthopedic specialists handle cases of fractures. Few cases of silicosis come to the Clinic, but these too are handled by specialists. The same is true for other types of injuries. Specialists are used in all cases. This division of work which can be made in any large clinic or hospital probably is of benefit to the worker and insurer.

The doctors in the Lovelace Clinic are very willing to take cases under the Workmen's Compensation Act and the injured men cooperate well with the physician.[14] The worker is free to choose his doctor, for he is not assigned any special one by the Clinic. The Clinic makes many pre-employment physical examinations. These are

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In all cases, including hernia, insurance companies have paid promptly, excluding exceptions already noted. For cases running over a long period of time a blanket charge is generally made, but this is up to the individual doctor.[17]

Lovelace Clinic appears to have a method of operation which very adequately cares for the injured worker. Much of the procedure followed by the Clinic is the result of its own policy and is not required by the Workmen's Compensation Act.

If the procedure of the Lovelace Clinic is typical of the method in which all injuries are handled in New Mexico and all insurance companies pay the medical expenses of the injured worker in full, as the above information would seem to indicate, it would be difficult to see how the expenses per medical case could average $3.44 as the writer found by using the figures of the Eighteenth Annual Report of the State Labor and Industrial Commission.[18] There are several possibilities

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[15] Mrs. Cook, loc. cit.

[16] Loc. cit.

[17] Loc. cit.

[18] Nathaniel Wollman, An Appraisal of New Mexico Labor Legislation (Division of Research, Department of Government, University of New Mexico, Bulletin No. 24. Albuquerque: University of New Mexico Press, 1950), p. 15.

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If the procedure of the Lovelace Clinic is typical of the method in which all injuries are handled in New Mexico and all insurance companies pay the medical expenses of the injured worker in full, as the above information would seem to indicate, it would be difficult to see how the expenses per medical case could average $2.44 as the writer found by using the figures of the Eighteenth Annual Report of the State Labor and Industrial Commission.[18] There are several possibilities

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that might be considered in this apparent discrepancy.

Injuries requiring medical care may be incorrectly reported or not reported at all. This seems very probable in view of the lax reporting procedure now in practice. The medical treatment a worker receives in Lovelace Clinic is probably superior to treatment given elsewhere in the state. The remainder of the state does not have the medical facilities Albuquerque has, nor does the rest of the state have the population to support such activities.

Two other possibilities exist, neither of which is very probable. The workers may have extremely minor injuries requiring very limited treatment. From the author's experience, when one makes an office call upon a doctor, the fee usually runs from three to five dollars. However, doctors' fees in cities other than Albuquerque may be much lower. Another possibility is that many injured workmen are receiving free medical care. This appears most unrealistic.

The reasons for the difference between the apparent treatment of injuries under workmen's compensation by Lovelace Clinic and the average cost per accident of $3.44, as noted above, are as follows: 1) Lovelace Clinic probably is not typical in its methods of handling workmen's compensation cases, and 2) poor reporting of accidents has probably occurred.

This chapter has shown that the medical benefits provisions of the New Mexico Workmen's Compensation Act are among the best. The chapter has illustrated the type of treatment for injuries workers may expect from one group of doctors. Also an apparent discrepancy

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Injuries requiring medical care may be statistically reported but not reported at all. This seems very probable in view of the law requiring procedures now in progress. The medical treatment a worker receives in Lowlaca County is probably superior to treatment given elsewhere in the state. The employer of the worker does not have the medical facilities Hoopersville has, nor does the rest of the county have the population to support such activities.

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has been noted between probable medical treatment under workmen's compensation in the Albuquerque area and the size of the average medical payments reported for New Mexico as a whole.

The next chapter will examine the statutory restriction on legal fees and its actual application in New Mexico workmen's compensation cases.

## CHAPTER VII

## RESTRICTION OF LEGAL FEES

A worker can have unlimited medical fees paid for him by insurance carriers or employers, but for the employer's protection a limit on fees to attorneys and others has been set. The New Mexico Act prohibits attorneys, interpreters, or other parties from collecting over ten percent of the award for aid given the claimant in receiving his benefits except under certain conditions. The Act states that:

> It shall be unlawful for any person or any number of persons acting together or separately..., including attorneys, agents, interpreters, and all other persons, to receive or agree to receive ... for services rendered ... under this act, any sum or sums aggregating more than ten percentum of the whole amount received .... Provided that where compensation, to which any person shall be entitled under ... this act, shall be refused and the claimant shall thereafter collect compensation through court proceedings in an amount in excess of the amount tendered by the employer prior to the court proceedings, the compensation to be paid the attorney for claimant may be increased at the direction of the court ..., and such amount ... shall be paid ... in addition to the compensation allowed the employee under the provisions of this Act.[1]

The restriction on legal fees applies to cases requiring no court action. In New Mexico many workmen's compensation cases are never filed for court approval. Of those reaching the clerk of the District Court, many do not receive more than the judge's signature signifying approval. In these cases the insurance company and the attorney filing the claim for the worker appear to agree upon the attorney's fee. The small number of remaining cases where a trial

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is required are not subject to the ten percent limit, as has been seen. Of fifty-eight cases settled between the dates of August 25, 1948, to September 14, 1949, in District Court No. 2, Albuquerque, twenty were settled by trial, thirty-two were settled out of court and filed, and six were dismissed.

In cases tried, the judge is at liberty to set a reasonable amount for an attorney fee. This amount may vary from about ten percent up to nearly as much as the claimant gets. In one of the twenty cases mentioned above, the claimant was awarded $2,360 and the attorney two hundred dollars. This represented less than ten percent for the attorney. In another case, the claimant got seven hundred dollars, the attorney one hundred dollars. The highest percentage going to an attorney was in a case involving facial disfigurement. Here the claimant received four hundred fifty dollars, the attorney two hundred twenty-five dollars. In these cases the attorney fees were in addition to funds received by the claimant.

The judicial opinion is that no limit should be set on cases involving extensive action, for such a limit might well restrict the ability of the claimant to receive good counsel. The amounts allowed by the judges represent what they believe to be a fair return for the work involved in the case.[2] An illustration of a rather high award upheld by the State Supreme Court occurred in the case of Elsea v. Broome Furniture Company.[3] The attorney was awarded one thousand

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The desirability of having attorneys to represent claimants in disputed claims is a much argued point. Many states have attempted to remove the attorney and the court from workmen's compensation cases by installing a commission system of administration. New Mexico is one of the few states still adhering to a court system for administration of workmen's compensation. Because others have abandoned this type of administration does not necessarily mean that New Mexico should do so, but it does place New Mexico in a position where it must justify its current system.

Judge R. F. Deacon Arledge, after considerable study of commission type administration programs, has said he believes court administration to be fairly sound. He stated administration by an industrial commission would be comparable to the method used by the Veterans' Administration in its handling of service-incurred disabilities.[4] In such cases the claimants are usually poorly represented and the hearings are behind closed doors. Attorneys are seldom used and the claimant is handicapped by this lack of counsel.

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Frequently, according to Judge Arledge, the policy of the claims examiner is shaped by the political winds of the time and the economic conditions. The judge believed that commissions usually know little law and no medicine, yet they must develop and adjudicate claims.[5]

In New Mexico, a claimant under workmen's compensation can get good counsel, although possibly not too easily.

The above conclusions of Judge Arledge are quite opposed to the opinions of labor leaders and state labor administrators. Walter F. Dodd, who investigated the administration of workmen's compensation and published his findings in 1936, has said that "it may safely be said that court administration of workmen's compensation has failed."[6] However, because of limited financial resources and because of the small amount of industrialization in New Mexico, court administration may be necessary even if not greatly to be desired.

In cases where the law is vague, as for example in the area of what constitutes "loss of" a member, a good lawyer may secure a desirable award for the claimant. The New Mexico law as it now appears is not clear on many points. It is in these areas of confusion that claimants can profit by using the services of attorneys. Unless the New Mexico Workmen's Compensation Act is greatly clarified, the use of attorneys by claimants will probably be a necessity if justice is to be secured for the injured worker. Of the total number of cases under the New Mexico Act, probably very few reach the trial stage.

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[5] Arledge, loc. cit.

[6] Walter F. Dodd, Administration of Workmen's Compensation (New York: The Commonwealth Fund, 1936), p. 98.

Consequently the Workmen's Compensation Act has not caused a great increase in the work of the courts or in the work of the attorneys. This does not mean that the number of cases requiring court action is any criterion of adequate compensation or efficient administration.

The technical competence of commissioners, assuming a possible new law gave the governor the power to appoint the member or members, would depend on the governor. This in turn would depend on whether there was a climate of informed public opinion which would constrain the governor to select the men having the highest qualifications.

Estimating how soon the steadily increasing industrialization of New Mexico will result in an effective demand for the commission type of administration in this state is beyond the scope of this paper. However, the trand in states with substantial percentages of their employment in non-agricultural pursuits is toward the commission form.

The total number of workmen's compensation cases tried in a given period is a negligible percentage of the total cases coming before the court.[7] The workload of the court has not been appreciably increased by this Act. Although some attorneys specialize in representing claimants of workmen's compensation and some specialize in representing insurers and employers, no attorney appears to do this exclusively. Since the New Mexico Act is largely "self-administering," the vast majority of the cases are settled with little or no aid of counsel. To illustrate this, consider that for Bernalillo and Sandoval counties,

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[7] Arledge, Jr., op. cit.

for the fifty-five week period from August 25, 1948, to September 14, 1949, seventy-three workmen's compensation cases were filed in District Court No. 2, Albuquerque. These two counties had twenty-five percent of the total business units of the state in April 1950. They had also twenty-seven percent of the total wage payroll.[8] Therefore, these two counties might be expected to have about one-fourth of the compensable injuries in the state for a given period. If one will grant the assumptions that injuries occur evenly throughout the state according to establishments and payrolls, regardless of type, this comparison can be of some use.

For 1948-49 fiscal year, 13,831 accidents were reported to the Labor Commissioner. Only 3,717 of these were compensable.[9] This gives a state wide weekly average of compensable cases for the given year of seventy-one. Assuming one-fourth of these belong to the two given counties, one sees an average of eighteen a week. For a given fifty-five week period one might then expect 990 compensable accidents in Bernalillo and Sandoval counties. For the period August 25, 1948, to September 14, 1949, (fifty-five weeks) seventy-three cases under workmen's compensation were filed for the two counties given.

Assuming a wide margin of error in this simple computation, the fact remains that these figures do give an illustration of what might

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[8] Monthly Bulletin, Employment Security Commission of New Mexico, Albuquerque, New Mexico, April, 1950.

[9] "Workmen's Compensation Statistics for Fiscal year 1948-49," Office of Labor Commissioner, Santa Fe, New Mexico (unpublished report).

for the fifty-five week period from August 25, 1948, to September 11, 1949, seventy-three workmen's compensation cases were filed in District Court No. 2, Albuquerque. These two counties had twenty-five percent of the total business units of the state in April 1950. They had also twenty-seven percent of the total wage payroll.[8] Therefore, these two counties might be expected to have about one-fourth of the compensable injuries in the state for a given period. If one will grant the assumptions that injuries occur evenly throughout the state according to establishments and payrolls, regardless of type, this comparison can be of some use.

For 1948-49 fiscal year, 13,831 accidents were reported to the Labor Commissioner. Only 3,747 of these were compensable.[9] This gives a state wide weekly average of compensable cases for the given year of seventy-one. Assuming one-fourth of these belong to the two given counties, one sees an average of eighteen a week. For a given fifty-five week period one might then expect 990 compensable accidents in Bernalillo and Sandoval counties. For the period August 25, 1948, to September 11, 1949, (fifty-five weeks) seventy-three cases under workmen's compensation were filed for the two counties given.

Assuming a wide margin of error in this simple computation, the fact remains that these figures do give an illustration of what might

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[9] "Workmen's Compensation Statistics for Fiscal year 1948-49," Office of Labor Commissioner, Santa Fe, New Mexico (mimeographed report).

be expected for cases under workmen's compensation. Of a possible 990 compensable cases for a fifty-five week period, seventy-three were filed for court action. Of these fifty-eight had been settled, twenty by trial. Granting even a slight degree of probability to the background of these calculations, it is hard to see, given current settlement techniques, that any but a small number of cases would require much effort on the part of an attorney. Of these, less than half utilize courtroom space. The New Mexico Act could not be said to overburden attorneys or the courts.

Since court administration is believed by many independent students of the problem to be undesirable and since New Mexico appears to have few cases requiring court action, a single administrator for workmen's compensation claims might be a workable compromise between administration by the courts and administration by a commission. This man would need to be an expert in the field with a knowledge of both law and medicine as they pertain to workmen's compensation. If a change in the New Mexico system is desired this possibility might be worth considerable examination.

In this chapter it has been shown that the statutory restriction of ten percent does not apply to the compensation case going before the court for trial. Furthermore, given the current lack of clarity in the New Mexico Workmen's Compensation Act and the low level of industrialization in New Mexico, court administration of the Act and utilization of legal counsel is probably necessary unless the state would desire the appointment of a single administrator

to handle nothing but the adjustment of claims under the Workmen's Compensation Act. As the Act now stands it creates no great burden for the courts or attorneys for most workmen's compensation claims appear to be settled between the claimant and the insurance company with no legal formality. The value of using an expert administrator would lie in his ability to deal solely with workmen's compensation cases and to speed payments of compensation where the claim is progressing slowly.

Now that a brief examination of the statutory limits on attorney fees has been undertaken and some discussion of the place of the courts in the handling of workmen's compensation cases has occurred, it is wise to discuss the administration of the Act and to see where final responsibility supposedly rests.

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## CHAPTER VIII

## ADMINISTRATION OF THE WORKMEN'S COMPENSATION ACT

In the last chapter it was noted that the courts are in charge of the administration of the New Mexico Workmen's Compensation Act. However, much of the administrative work performed under this Act is assigned to the Labor Commissioner and his staff. His duties are routine but vitally necessary to the proper functioning of this law.

The Labor Commissioner is appointed by the State Labor and Industrial Commission.[1] This Labor and Industrial Commission, composed of three members, receives reports from the Labor Commissioner and is to act as an advisory body to the Governor of New Mexico.[2] The members receive the same compensation for meetings and expenses as is received by the members of the New Mexico State Board of Education.[3] This compensation consists of five dollars per day of actual attendance and six cents a mile travel allowance.[4] Apparently no compensation is received unless meetings are held.

The New Mexico State Labor and Industrial Commission is composed of Charles Lembke, H. H. Williams and Joe Granito. Mr. Williams resigned in December 1947 and has not been replaced. Neither Mr. Granito nor Mr. Lembke has been seriously engaged in the work of

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1 N.M. Stat. 1941, Sec. 57-102.

2 Ibid., 57-106.

3 Ibid., 57-104.

4 Ibid., 55-103.

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1 N.M. Stat. 1941, Sec. 57-107.

2 Ibid., 57-106.

3 Ibid., 57-106.

4 Ibid., 55-103.

the Commission, for the Commission has not met for approximately two years.[5] Mr. Joiner, the Labor Commissioner, carries out his tasks without much supervision by the Commission. Since this group is inactive, presumably its advisory duties fall upon the Labor Commissioner.

The Labor Commissioner is charged with enforcement of the Workmen's Compensation Act and all other labor legislation not specifically assigned to another department.[6] He makes annual reports to the Governor of the statistical details relating to his office. He reports especially upon the following:

> The commercial, social and sanitary conditions of the employees, the means of escape from dangers incident to their employment; the protection of life and health in factory or other places of employment; the labor of women and children and the hours of labor exacted from them and in general all matters which tend to affect the prosperity of the mechanical, manufacturing and productive industries of this state and of the persons therein.[7]

He is also to have the power to inspect any business establishment:

> ...for the purpose of gathering facts and statistics contemplated by this act, and to examine safeguards and methods of protection from danger to employees, the sanitary conditions of the buildings and surroundings, and make a record thereof.[8]

To perform these many duties of the office of the Labor Commissioner, there is a staff of three people: 1) A. E. Joiner, Commissioner;

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[5] Source cannot be disclosed.

[6] N.M. Stat. 1941, Sec. 57-109.

[7] Ibid., Sec. 57-110.

[8] Ibid., Sec. 57-111.

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[7] Ibid., Sec. 57-110.

[8] Ibid., Sec. 57-112.

2) Ebenezer Jones, assistant and 3) Mrs. Cortez Hannah, executive secretary. The total appropriation for the department was $15,400 for the fiscal year 1947-48, $9,400 of which went for salaries.[9]

The many duties to be performed by the Labor Commissioner and the small size of his staff and appropriation make adequate operation impossible. The Commissioner must rely upon correspondence with business establishments rather than upon inspection tours to achieve compliance with the Act.[10]

By law, employers are required to make reports of compensable accidental injuries to the Labor Commissioner within ten days after the accident.[11] However, according to Mr. Jones, many accidents are not reported. A penalty of from twenty-five to one hundred dollars for failure to report is provided, but this provision has never been enforced.[12] The Labor Commissioner has the power also to close a plant under the Workmen's Compensation Act for the employer's failure to file an insurance policy or security bond as required by the Act. This authority has never been used, since a company need only post a sign saying it has rejected the Act if it is engaged in an extra-hazardous pursuit named or is not able or does not wish to carry workmen's compensation insurance.[13]

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9 Eighteenth Annual Report (New Mexico State Labor and Industrial Commission, Santa Fe, New Mexico, July 15, 1948), p. 15.

10 Ebenezer Jones, Assistant Labor Commissioner, Interview, June 21, 1950.

11 N.M. Stat. 1941, Sec. 57-927.

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As has been noted, New Mexico has no safety code, and the Commissioner's office can do little toward improving safety condistions without it. Generally, the Labor Commissioner's duties are of an administrative nature. He has no power to set awards under the Workmen's Compensation Act. To do the task set before him by the law would require increased appropriations, a larger staff, and probably more authority from the legislature. The authority might be in the form of a safety code and the organization of duties in a manageable manner under one administrator. As the situation now exists, the Labor Comminnioner's office is unable to perform all of its duties adequately. However, the real administration of the act rests with the court.

The court has authority to give or withhold final approval of all workmen's compensation cases, if the claimant or insurer seeks such approval.[14] The court can decide the amount of the attorney's fees, the size of the payment to the claimant, and the form the award shall take. However, as has been noted, no great use of the courts has been made. Settlements involving workmen's compensation fall into three categories: 1) those settled and never filed for court approval; 2) those settled out of court and filed for approval; 3) those actually tried before a judge or a jury. Those in the latter category usually develop from an injury being allegedly understated in a medical report or from a cash settlement that has been made prior to the termination of an injury causing the man to feel he is entitled to more compensation.[15]

The workers believe the attitude of attorneys and doctors under

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14 N. M. Stat. 1941, Secs. 57-913, 57-916, 57-925.

15 Judge R. F. Deacon Arledge, Interview, June 14, 1950.

workmen's compensation has added to their difficulties in securing their rights under the Act. The fees paid by insurance companies are substantial. The men hired by the companies are the best. Thus it has become an honor for both doctors and lawyers to represent insurance companies and employers. Consequently, it has been difficult, outside of large cities, for a claimant to have his case adequately represented. Under the Federal Railroad Liability Act a man sues for compensation for his injuries. If such a case were to involve the Santa Fe Railroad, the suit would probably be heard in San Francisco or Chicago. In either of these two cities the man would probably get a larger award than if the suit appeared in New Mexico. The standards of living and the climates of opinion vary greatly with geographic location. The juries are influenced by the local situation. Consequently, an injured man will probably receive an award commensurate with the local standard of living. However, more attorneys are becoming interested in worker's claims and the worker's chances of securing good counsel have improved somewhat in recent years.[16]

In rejecting the act, the employer loses his common law defenses in many states. Where a company elected not to be bound by the Oregon Workmen's Compensation Act, it was denied the privilege of using the common law defenses.[17] A similar ruling appeared in Kentucky; where the employer had not accepted the Act, he could not use the defenses of assumption of risk or contributory negligence.[18] A later case in

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16 Loc. cit.

17 Union Oil Co. of California v. Hunt, 111 F.2d 269 (1940).

18 Gatliff Coal Co. v. Hills Administrator, 92 S.W. 2d 56 (1936).

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Massachusetts again shows this attitude. Defenses of contributory negligence and voluntary assumption of risk were not open to the employer where he was not a subscriber under the Workmen's Compensation Act.[19] Florida refused to permit common law defenses in a case involving an injury received in a stable. The employer of a horse racing stable was held within the coverage of the Workmen's Compensation Act and the employee was entitled to sue the employer for injury. The result of the negligence of a fellow worker and the "fellow servant" rule was no defense.[20] It appears an employer in New Mexico would lose his common law defenses if he rejected the Workmen's Compensation Act. No case can be cited to illustrate this point, but lawyers believe the defenses would be lost for this would be in keeping with the liberal interpretations given to the Act and would be in keeping with the spirit of the Act. If an employer could keep his common law defenses by rejecting the Act, the Act would have little power to protect the worker.

The advantages to the employer of accepting coverage of the Act rest in having the risk insured and the amount payable relatively certain. When an employee sues for damages, a jury trial may be called and the award, if any, may be for any amount. The uncertainty of the consequences under this system make insuring the employer's liability highly desirable. The purpose of the Workmen's Compensation Act is to prevent this type of expensive and lengthy litigation.[21]

New Mexico's Workmen's Compensation Act provides no coverage for

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19 Roberts v. Frank's Inc., 49 N. E. 2d 427 (1943).

20 Jones v. Brink, 39 Southern 2d 791 (1949).

21 Judge R. F. Deacon Arledge, Interview, June 14, 1950.

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[20] Jones v. Brink, 39 Southern 24 781 (1949).

[21] Judge R. H. Larson Arledge, Interview, June 19, 1950.

agricultural or domestic workers. There is little litigation involving these categories. These groups assume the risks of their occupations and have little legal basis for action.[22]

The New Mexico Workmen's Compensation Act is viewed as an act applicable only to industry to care for injuries involving the use of machines. In industry the slightest mistake in the use of machines may cause serious injury and these accidents are in the province of the Workmen's Compensation Act.[23]

The right to compensation is the exclusive legal remedy of both employer and employee when both are subject to the act, when, at the time of accident, the employee is performing service arising out of and in the course of his employment, and where the injury or death is proximately caused by accident arising out of and in the course of employment, and is not intentionally self-inflicted.[24] No compensation is due or payable when the injury is the result of the worker's intoxication, or willfully suffered, or intentionally inflicted by himself.[25]

When a worker is injured the statute requires that he give notice in writing to the employer within thirty days of the date of the accident, unless the injury prevents him from doing so.[26] In all events he is required to notify the employer within sixty days. However,

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[22] Loc. cit.

[23] Loc. cit.

[24] N.M. Stat. 1941, Sec. 57-906.

[25] Ibid., Sec. 57-908.

[26] Ibid., Sec. 57-913.

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[24] N.M. Stat. 1941, Sec. 57-908.

[25] Ibid., Sec. 57-908.

[26] Ibid., Sec. 57-912.

no written notice is required where an overseer of the company had actual knowledge of the injury. Exclusive of the two mentioned exceptions, failure to give notice of injury in thirty days bars the worker from collecting compensation for that injury.[27] However, the worker must have knowledge of the injury before this rule applies. In Anderson v. Contract Trucking Company, Anderson did not discover until two years after injury that he was nearly blind in one eye. He thereupon filed his claim. Under the circumstances the claim could not be barred.[27a]

The employer is required to pay compensation within thirty-one days after date of injury. If the employer fails to pay compensation after receiving notice of injury, the statute states that the worker shall file a claim for this compensation with the clerk of the district court not later than one year after refusal or failure of the employer to pay. If death resulted, the claim is to be filed for the dependents within the same time period.[28]

After the worker has filed, the clerk is to docket the claim and mail certified copies to the employer and insurer. These parties are then allowed twenty days to answer the claim or to settle it. If no settlement or release is made by the end of the twenty-day period, the clerk is to forward the claim to the judge for hearing, unless one party has demanded a jury trial, in which case adjudication of the claim must wait for the first jury term thereafter for trial.[29]

The law requires that the trial shall be in as summary a manner as is possible. If no answer is filed, a judgment in favor of the claimant should be immediately rendered.[30]

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27 Loc. cit.

27a Anderson v. Contract Trucking Co., 48 N. M. 158 (1944)

28 N. M. Stat. 1941, Sec. 57-913.

29 Loc. cit.

30 Loc. cit.

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27 Loc. cit.

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28 N. M. Stat. 1941, Sec. 57-913.

29 Loc. cit.

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As has been noted, the law requires that the employer be notified by the worker of his injury, but a man's failure to appear for work is considered notification.[31] The usual procedure seems to be for employers to post signs in plants to notify the men that they are to go to a certain place for treatment if they receive an injury.

The original theory behind the Workmen's Compensation Act of New Mexico envisioned the injured worker filing with the clerk of the district court, paying his two dollar filing fee and leaving the remainder of the procedure to the court. In practice, however, it is not so simple. Practically all cases are filed by attorneys acting for claimants.[32] The attorney then handles the settlement.

Cases which have been settled out of court and are filed for court approval require only the judge's signature. However, Judge Arledge said that he reviews these settlements closely and has refused approval on some of them. It is the judge's opinion that cases of this nature are more likely to involve smaller payments to the claimant than those coming into court for trial.

In Table XI awards approved by the court in Bernalillo County are given. Nine of the awards are trial awards; nine are merely court approved. These cases were selected because of the fact that the injuries or claims compare favorably to those given in the statutory schedule. No effort is made at slanting the conclusions by careful selection. All eighteen were lump sum awards. One will notice that the statutory

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31 Judge R. F. Deacon Arledge, Interview, June 14, 1950.

32 Loc. cit.

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31 Judge R. F. Deason Arledge, Interview, June 14, 1950.

32 Loc. cit.

TABLE XI

AWARDS APPROVED BY COURT[33]

| Method of Settlement | Nature of claim and disability | Award received (excludes medical) | Statutory maximum |
|---|---|---|---|
| 1) Tried | Right foot and ankle: 30% total permanent | $ 1100.00 | $ 1100. |
| 2) Tried | Injury to eye causing removal; partial permanent | 1025.59 | 2420. |
| 3) Tried | Loss of part of second and third fingers; partial permanent | 176. | 176. |
| 4) Tried | Injuries amounting to permanent total; sought 50% increase for lack of safety devices | 5000. | 12,100 or 18,150 |
| 5) Tried | Injuries amounting to permanent total disability | 4074.48 1000 Atty. | 12,100 |
| 6) Tried | Lower spine and left hip; partial permanent | 2360.* | 3,960 for loss of leg |
| 7) Tried | Injuries amounting to permanent total | 5677.08* | 12,100 |
| 8) Tried | Right hand and side of body; possible permanent | 300* | 2,420 |
| 9) Tried | Loss of thumb and nervousness | 3000* | 900 (thumb only) |
| 1) Court approval | Total permanent disability | 1500 | 12,100 |
| 2) Settled out of court after filing | Permanent total disability | 4864 | 12,100 |
| 3) Court approval | Permanent total disability | 5000 500 Atty. | 9,900 |
| 4) Filed and later settled out of court | Permanent total disability | 5000 | 12,100 |

TABLE II

AMOUNT AWARDED BY COURT[32]

| Method of Settlement | Nature of claim and disability | Award received | Contributory negligence |
|---|---|---|---|
| 1) Tried | Right foot and ankle 10% total permanent | $ 4,000.00 | 1200 |
| 2) Tried | Injury to eye causing removal partial permanent | 10823.29 | 5420 |
| 3) Tried | Loss of part of crown and third fingers; partial permanent | 175 | 500 |
| 4) Tried | Injuries amounting to permanent total; accept 50% increase for lack of salary deduct | 5000 | 12,100 or 18,175 |
| 5) Tried | Injuries amounting to permanent total disability | 40,644 1000 PTD | 12,100 |
| 6) Tried | Lower spine and left hip; partial permanent | 2300 | 3,000 loss of leg |
| 7) Tried | Injuries amounting to permanent total | 5577.08 | 12,100 |
| 8) Tried | Right hand and ankle of heart; probably partial | 500 | 1,420 |
| 9) Tried | Loss of tonsils and nervousness | 1030 | 500 (alone only) |
| 1) Court approval | Total permanent disability | 1500 | 12,100 |
| 2) Settled out of court after filing | Permanent total disability | 4000 | 12,100 |
| 3) Court approval | Permanent total disability | 5000 500 ASAP | 6,500 |
| 4) Filed and later settled out of court | Permanent total disability | 5000 | 12,100 |

TABLE XI (Continued)

| Method of Settlement | Nature of claim and disability | Award received (excludes medical) | Statutory maximum |
|---|---|---|---|
| 5) for court approval | Loss of leg (location not given); permanent total | $ 2,972 | $ 2,640 to 3,960 for loss of leg depending on location |
| 6) for court approval | Lost upper hald index finger | 330 | 330 |
| 7) for court approval | Possible permanent total disability | 2,000 | 12,100 |
| 8) for court approval | Loss of vision in eye; partial permanent | 1,347.46* | 2,420 |
| 9) for court approval | Loss of sight of both eyes; permanent total | 7,250 | 12,100 |

(*) May include some medical benefits

33 From the files of District Court #2, Albuquerque, New Mexico, for period August 25, 1948 - September 14, 1949.

TABLE XI (Continued)

| Method of Settlement | Nature of claim and disability | Award received (excludes medical) | Statutory maximum |
|---|---|---|---|
| 5) For court approval | Loss of leg (location not given) permanent total | $ 2,972 | $ 2,840 to 12,100 for loss of leg depending on location |
| 6) For court approval | Lost upper half index finger | 330 | 330 |
| 7) For court approval | Possible permanent total disability | 2,000 | 12,100 |
| 8) For court approval | Loss of vision in eye; partial permanent | 1,347.46* | 2,420 |
| 9) For court approval | Loss of sight of both eyes; permanent total | 7,250 | 12,100 |

(*) May include some medical benefits

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[1] From the files of District Court #2, Albuquerque, New Mexico, for period August 25, 1942 - September 14, 1949.

maximum for total permanent disability will vary. This is because the maximum weekly benefits allowed by the law varied from year to year depending upon the date of injury. In 1945, maximum weekly payments were eighteen dollars; in 1947 they were raised to twenty-two dollars; again they were raised in 1949 to the current level of twenty-five dollars. In all cases the weekly time limit has remained the same. It should be noted also that the claims listed here probably would not be filed or tried unless there was a question about the award. Consequently comparison with the maximum allowable compensation is unfair to some extent. Also, the assumption is made that the workers' weekly salary was high enough, as it was in all cases where salary was given, to assure maximum compensation if it were granted. The statutory maximum sum was arrived at by multiplying the maximum weekly benefits by the number of weeks compensation would run, depending upon the statutory limits.

Of the nine tried cases, two awards were for the exact statutory amount. One was considerably over the statutory limit. In this case a cook had lost a thumb through an infected wound and claimed the injury resulted in severe loss of weight and nervousness. For the thumb alone, he could have received but nine hundred dollars. The court awarded him three thousand dollars, presumably to compensate for the other factors involved. The remaining six cases were settled for less than the statutory limit. With the exception of one case, the awards ranged from slightly less than one-half to approximately two-thirds of the maximum. The lowest award was for claimed loss of use of right hand and right side of body. For the hand, if complete loss of use occurred, the

maximum for total permanent disability will vary. This is because the maximum weekly benefits allowed by the law varied from year to year depending upon the date of injury. In 1945, maximum weekly payments were eighteen dollars; in 1947 they were raised to twenty-two dollars; again they were raised in 1949 to the current level of twenty-five dollars. In all cases the weekly time limit has remained the same. It should be noted also that the claims listed here probably would not be filed or tried unless there was a question about the award. Consequently comparison with the maximum allowable compensation is unfair to some extent. Also, the assumption is made that the workers' weekly salary was high enough, as it was in all cases where salary was given, to assure maximum compensation if it were granted. The statutory maximum sum was arrived at by multiplying the maximum weekly benefits by the number of weeks compensation would run, depending upon the statutory limits.

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worker could have received $2,420. Apparently the court saw little justice in the claim, for only three hundred dollars was granted.

In the nine cases submitted for court approval or settled out of court, one case involved the exact amount the statute would allow. One case involving loss of a leg was settled for approximately the statutory limit, depending upon the location of the amputation. The location was not given, so one must assume the stated limits. The remaining seven cases were settled for less than the maximum amount. Payments on permanent total disability ranged from $1,500 up to $7,250. In all cases the statutory maximum was approximately ten thousand dollars or over. These cases were settled for proportionately less than those in the previous group.

There are many reasons why a case may be settled for less than the statutory amount. First, the worker may be in need of money and may be ignorant of what he can receive. He may then gladly accept whatever the claims adjustor will grant. If this case is not filed in court, no record of the settlement will appear. If the case is filed in court, the judge may signify agreement with the settlement by signing it without careful examination of the award.

Second, the worker may have a claim that is shrouded in doubt. The validity of the claim may be tested in court. The worker may receive much or little depending upon the skill of his attorney, the skill of the opposing attorney and the decision of the judge, or the jury.

Third, insurance companies appear never to pay the full amount for an injury if a lump sum settlement isto be made. Furthermore, the

worker could have received $2,250. Apparently the court saw little
justice in the claim, for only three hundred dollars was granted.

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judge may simply agree with the settlement by signing it without
careful examination of the award.

Second, the worker may have a claim that is barred in court.
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ceive much or little depending upon the skill of his attorney, the skill
of the opposing attorney and the decision of the judge, or the jury.

Third, insurance companies appear to pay the full amount
for an injury if a jury can settlement take be made. Furthermore, the

courts appear not to expect them to pay the full amount.

Fourth, the mood of the jury, the economic background of its members, and the section of the state from which it is drawn are all factors influencing court awards under a jury trial. Standards of living fluctuate according to geographic areas and awards are consequently affected.

To determine precisely why a certain award of workmen's compensation is given seems impossible. Any one or a number of the given possibilities may operate to influence the award of a specified sum at any given time.

Table XII illustrates that among the cases examined trial awards were greater than those filed for court approval as Judge Arledge stated. Sums in cases receiving court approval ran forty per cent of the possible maximum, while those in trial awards ran forty-eight per cent of maximum. This points out certain weaknesses in the settlement procedure involved.

One factor which enters the situtation about which there is considerable dissention is the disqualification of judges. Under New Mexico law any judge may be disqualified by either party in a case if the party files a statement to the effect that he believes he will not receive a fair trial from the judge in question.[33a] Insurance companies and claimants have used this in an effort to remove a case from the jurisdiction of a judge whom they believe to be prejudiced. The parties then agree upon another person who is a member of the bar, to hear the case.[33b] The object is to secure what will be for each a fair trial.

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33a. N. M. Stat. 1941, Sec. 19-508.

33b. Holloman v. Leib, 17 N. M. 270 (1912)
Moruzzi v. Federal Life and Casualty Co., 42 N. M. 35 (1938).

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39a. N. M. Stat. 1941, Sec. 19-308.

39b. Solomon v. Leib, 17 N. M. 270 (1912)
Kennedy v. Federal Life and Casualty Co., 43 N. M. 35 (1939).

TABLE XII

COMPARISON OF SUMS OF 18 AWARDS[34]

| | Average granted | Average possible | % of total possible |
|---|---|---|---|
| Trial awards | $ 2,524 | $ 5,253 | 48 + |
| Approved awards | 3,363 | 8,421 | 40 - |

| | Total granted | Total maximum |
|---|---|---|
| Trial awards | $ 22,713.15 | $ 47,276 |
| Approved awards | 30,263.46 | 75,790 |

34 From files of District Court #2, Albuquerque, N.M.

TABLE XII

COMPARISON OF SUMS OF 12 AWARDS[34]

| | Average granted | Average possible | % of total possible |
|---|---|---|---|
| Total awards | $ 2,524 | $ 5,252 | 48 % |
| Approved awards | 3,363 | 8,423 | 40 - |

| | Total granted | Total maximum |
|---|---|---|
| Total awards | $ 22,723.15 | $ 47,276 |
| Approved awards | 30,263.45 | 75,790 |

[34] From files of District Court #2, Albuquerque, N.M.

This factor in New Mexico law is hard to evaluate. A judge who has the habit of refusing to accept the settlement reached in out of court cases under workmen's compensation because he believes benefits granted to be too meagre may be continually disqualified from handling settlements made by the insurance company or companies involved. However, on the other hand, there is nothing to prevent an attorney from postponing his case until he believes it will be heard by a judge he considers partial to his point of view. He then files, hoping the judge of his choice will hear the case. If his timing is right and the opponent does not disqualify the judge, this attorney may have the point of vantage. This clause in the law needs close examination. It may work against the claimant in compensation cases, or it may not.

Generally speaking, insurance companies pay promptly the initial benefits due under workmen's compensation. The delay comes in a later effort to bring the case to conclusion, when the claim is shrouded in doubt.

In litigated cases the court does not appear to be slow. Usually cases are settled in twenty days and seldom does a case run over seven months. This may be somewhat slower than the commission type of administration but, according to Judge Arledge, it is more thorough in the consideration of the case.[35] If one of the parties seeks a jury trial, the case must wait until the next jury meets. These cases are the slowest.

Although it is difficult to establish the promptness or slowness

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35 Interview, June 14, 1950.

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Although it is difficult to establish the promptness or slowness

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[35] Interview, June 14, 1950.

of claims payments, much criticism of the length of time taken to make benefit payments was found by the author. No concerted action toward specific improvements was seen. No conclusive evidence was found to show how long a period of time elapsed before compensation was received. Considerable agreement exists that the Mountain States Mutual Casualty Company pays as promptly as any other and is more prompt than many. It writes the greatest amount of workmen's compensation policies in New Mexico, as can be seen in Table XIV.

One of the difficulties of a court administered system is the fact that awards will vary from judge to judge and county to county.[36] This would not occur in a commission type of administration and is one of the reasons why some insurers favor a commission. A commission type of administration based on a merit system might be desirable.[37] But a commission system where politics were involved would probably be worse than the present system. However, an administrator or a commission could be selected by using a merit system. This would eliminate appointments based solely upon political affiliation.

In 1948 New Mexico extended the coverage of its Act to include extra-territorial workers,[38] thus bringing the law in line with desirable national norms. If an employee is hired in New Mexico but injured out of the state, he is entitled to draw compensation from his New Mexico employer. However, the provision applies only to those injuries received during the first six months of such out of state employment

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36 R. F. Apodaca, Superintendent of Insurance, Interview, June 21, 1950.

37 Loc. cit.

38 N. M. Stat. 1941, Sec. 57-933 et. seq.

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36 E. F. Apodaca, Superintendent of Insurance, Interview, June 21, 1950.

37 Loc. cit.

38 N. M. Stat. 1941, Sec. 57-1[illegible] et. seq.

unless the employer has filed notice with the State Labor and Industrial Commission of New Mexico that he has elected to extend such coverage to a greater period of time. Generally, no criticism of this clause was found.

The New Mexico Act covers legally and illegally employed minors on the same basis as though they were mature, legally employed individuals.[39] Seventeen states provide additional compensation for minors illegally employed. In Wisconsin, compensation is doubled or trebled for injuries to minors illegally employed, depending upon the nature of the violation.[40] New Mexico might consider this provision to aid in enforcement of the child labor laws.

Because of the fact that insurance companies may refuse to insure any employer, these companies and their policies play a large role in deciding which groups will have workmen's compensation insurance and which will not. Insurance companies are supervised by Mr. R. F. Apodaca, State Superintendent of Insurance, and his staff of twelve. The Superintendent of Insurance has the power to approve rates charged for workmen's compensation insurance.[40a] Some rates have been lowered and many have been raised. There are seventeen job classifications which are considered to be poor risks in New Mexico, including those in oil well

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39 State Workmen's Compensation Laws, as of October 1, 1948 (U. S. Dept. of Labor, Bureau of Labor Standards, Bulletin No. 99, Washington, 1949), p. 29.

40 Loc. cit.

40a N. M. Stat. 1941, Secs. 66-601 et. seq.

unless the employer has filed notice with the State Labor and Industrial Commission of New Mexico that he has elected to reject such coverage for a greater period of time. Generally, no evidence of this element was found.

The New Mexico Occupational Disease Act (Ch. 111, Laws 1959) employed mainly on the same basis as coverage under workmen's compensation. Legally employed individuals, Government employees and independent contractors are mainly eligible employed. In Wisconsin, compensation is doubled or trebled for injuries or to minors illegally employed. Damages upon the nature of the violation. New Mexico might consider this provision in aid to enforcement of our child labor laws.

Because of the fact that insurance companies are reluctant to insure any employer, these companies and their policies play a large role in deciding which groups will have workmen's compensation insurance and which will not. Insurance companies are supervised by the N. M. Insurance State Superintendent of Insurance, and his staff of 9 people. The Superintendent of Insurance has the power to approve rates charged for workmen's compensation insurance. Some rates have been lowered and many have been raised. There are certain job classifications which are considered to be poor risks in New Mexico, including those in U.S. mail.

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39 State Workmen's Compensation Laws, as of January 1, 1958 (U. S. Dept. of Labor, Bureau of Labor Standards, Bulletin No. 99, Washington, 1958), p. 20.

40 Loc. cit.

40a N. M. Stat. 1953, Sec. 59-[illegible] et. seq.

operations, mines and sawmills. These classifications, because of their accident record, must have rates which make it possible for insurance companies to carry these risks without unfair losses.[41] Insuring hazardous risks, such as butane gas operations, have ruined some companies. Others have failed financially because of poor investment practices. These things must be watched by the State Insurance Board. The public must be safeguarded against unfair action by insurance companies and other companies in New Mexico. This covers many areas of operation for the Board and the Superintendent.[42]

The basic workmen's compensation insurance rates as given in the workmen's compensation insurance manual are standard for each job classification under workmen's compensation. For example, an employer who hires carpenters can expect the same rate for this group regardless of the insurance company who writes the policy. Some companies penalize their policy holders for frequency of accidents.[43] Most companies have experience ratings for policy holders who have been insured for a number of years. These rates are based upon premiums earned as opposed to losses for a particular company. These rates may be either above or below manual rates depending upon the policy holder's experience with injuries.

Generally speaking, premium rates for workmen's compensation insurance are based upon the accident experience of the industry. The

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41 R. F. Apodaca, Interview, June 21, 1950.

42 Loc. cit.

43 Loc. cit.

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[41] R. F. Apodaca, Interview, June 23, 1950.

[42] Loc. cit.

[43] Loc. cit.

experience used is both nation-wide and state-wide. Some variation of rates from state to state occurs. As of July 1, 1950, the New Mexico rates are generally decreasing, This is in line with what has been happening in other states. These decreases give an opportunity to see the factors used in rate-making procedure. The losses suffered by an insurance company during a given period are tabulated. This sum is divided by the total amount of earned premiums. This figure then becomes the incurred loss ratio. This is a most significant factor in the decisions regarding rates. A permissable loss ratio of sixty percent is allowed. This ratio is merely believed to be sound by actuaries and is not a statutory regulation. If the incurred loss ratio equals sixty percent or approximately that percent abe and the permissable loss ratio is sixty percent as stated, rates will have a tendency to remain as they are. If the incurred loss ratio rises or falls significantly above or below the permissable loss ratio, the rates will have a tendency to rise or fall in relation to the incurred loss ratio. For example, assume losses of one hundred. Further assume premiums earned to be two hundred. Losses divided by earnings gives .50. The loss ratio is .50 or fifty percent of earnings.[43a]

The rate is the price an employer pays for workmen's compensation insurance. In workmen's compensation insurance the exposure to hazards is measured by the payroll expenditure of the employer. Consequently the rate is given as a cost per one hundred dollars of payroll. The premium can be obtained by multiplying the rate by the units of exposure to hazards. The rate may be divided into two parts: 1) the pure

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43a R. F. Apodaca, Superintendent of Insurance, Official Files, June 21, 1950.

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[72] H. I. Anderson, Superintendent of Insurance, Official File, June 21, 1950.

premium and 2) the expense loading.[44]

The pure premium represents the loss cost or the amount of expected loss per unit of exposure. This, when applied to total exposure, should produce sufficient funds to enable the company to pay all losses chargeable to the period for which the premium was collected. The expense loading represents the amount of expense per unit of exposure, and when applied to total exposure it gives the amount needed to cover the expenses of the insurance company.[45]

The rate is composed of two parts: 1) a tabulation of exposure and incurred losses, and 2) a tabulation of premiums collected and expenses incurred.[46] When these are made for each state they are converted to a national level by taking the different factors within the states into consideration. Before this consolidation can take place a common denominator must be found to which everything can be reduced. For this, a single state and a single year's experience is chosen. When this is done the totals can be compiled.[47]

Pure premiums can now be calculated for each classification. These are obtained by dividing total losses multiplied by one hundred by total payroll.[48] This bases the premium upon one hundred dollars of

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[44] G. F. Michelbacher and Thomas M. Nial, Workmen's Compensation Insurance Including Employers' Liability Insurance (McGraw-Hill Insurance Series, New York: McGraw-Hill Book Company, Inc., 1925), p. 282.

[45] Loc. cit.

[46] Ibid., p. 285.

[47] Ibid., p. 288.

[48] Ibid., p. 289.

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44 G. F. Michelbacher and Thomas N. Nial, Workmen's Compensation Insurance Including Industrial Accident Liability Insurance (McGraw-Hill Insurance Series, New York: McGraw-Hill Book Company, Inc., 1951), p. 282.

45 Loc. cit.

46 Ibid., p. 285.

47 Ibid., p. 286.

48 Ibid., p. 287.

payroll as has been noted. These premiums must be reconverted to the level of state experiences.[49]

The projection and amendment factors are obtained next. Conditions of the state are studied to see if modification of the pure premiums for the state is necessary. The result is the projection factor and represents the net effect of all causes affecting pure premium cost. The amendment factor is an estimate of the cost of future changes. The effects of statutory amendments upon rates can be reasonably well foretold.[50]

After the pure premium for the state has been converted to a final pure premium, gross rates are to be calculated. For this two factors are used: 1) catastrophe loading and 2) expense loading. A catastrophe is a loss involving five or more deaths or permanent total disability cases. This loading is a flat one cent per one hundred dollars of payroll. The expense loading is about forty percent of the gross rate and is to cover the cost of handling claims.[51]

Most categories have minimum premiums established which are to be guaranteed before the risk can be undertaken. These minimum premiums are to cover the cost of writing the insurance and are required by sound business policy.

These policies cover the employer's liability under the Workmen's Compensation Act and include a charge for occupational disease insurance.

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[49] Ibid., pp. 289-291.

[50] Ibid., pp. 292-293.

[51] Ibid., pp. 293-294.

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[49] Ibid., pp. 289-291.

[50] Ibid., pp. 292-293.

[51] Ibid., pp. 293-294.

One policy covers weekly compensation when due, medical payments when necessary, and care for occupational diseases. Several companies also insure the employer's liability for fifty percent extra compensation for failure to have safety devices. This is not done by all companies.

There are approximately four hundred listed job classifications in the New Mexico rate manual.[52] Should an insurer be presented with a classification not given in the manual, a request for a classification code number and rate is sent to the Rating Bureau, Denver, or the New York office of the National Council on Compensation Insurance. Rates range from $15.67 per hundred dollars of payroll for stunt flying and parachute jumping, to $0.05 per hundred dollars of payroll for draughtsmen, clerical help and librarians. This range is dependent upon the accident experience of the categories involved.

In 1948, sixty-five companies wrote workmen's compensation insurance in New Mexico.[53] During that year total premiums were $3,207,366.85. Total losses amounted to $1,202,379.24. Dividends paid out were $170,620.79. Approximately thirty-eight percent of the total received was paid out in claims. When dividends are added to losses, the local insurance companies paid out forty-three percent of their premiums collected. This is considerably below the permissable loss ratio of sixty percent already mentioned. Insurance paid out was only forty-

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52 Workmen's Compensation and Employer's Liability Insurance Manual, National Council on Compensation Insurance, New York, 1934, and supplements.

53 R. F. Apodaca, Superintendent of Insurance, Official files, seen in personal interview June 21, 1950.

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[52] Workmen's Compensation and Employer's Liability Insurance Manual, National Council on Compensation Insurance, New York, 1952, and supplements.

[53] R. T. Andrews, Superintendent of Insurance, Official Files, seen in personal interview June 21, 1953.

TABLE XIII

NEW MEXICO EXPERIENCE[54]

| Calendar Year | Standard Earned Premium | Incurred Losses | Loss ratio (2/1) |
|---|---|---|---|
| 1946 | $ 1,803,089 | $ 1,040,855 | .577 |
| 1947 | 2,355,140 | 1,451,094 | .616 |
| 1946-1947 | $ 4,158,229 | $ 2,491,949 | .599 |
| 1947-1948 | 4,698,641 | 2,585,594 | .550 |
| 1948 | 2,680,300 | 1,402,091 | .523 |
| 1949 | 2,910,508 | 1,419,154 | .488 |
| 1948-1949 | $ 5,590,808 | $ 2,821,245 | .505 |

[54] National Council on Compensation Insurance, New York, Letter to R. F. Apodaca, May 11, 1950.

TABLE XLII

NEW MEXICO EXPERIENCE[34]

| Calendar Year | Standard Earned Premium | Incurred Losses | Loss Ratio (2/1) |
|---|---|---|---|
| 1946 | $ 1,003,389 | $ 1,040,855 | .577 |
| 1947 | 2,555,140 | 1,451,094 | .616 |
| 1946-1947 | $ 1,152,229 | $ 2,491,949 | .599 |
| 1947-1948 | 1,598,641 | 2,505,794 | .550 |
| 1948 | 2,080,300 | 1,402,091 | .527 |
| 1949 | 2,210,508 | 1,119,151 | .488 |
| 1948-1949 | $ 5,590,808 | $ 2,821,245 | .505 |

[34] National Council on Compensation Insurance, New York, Letter to R. T. Appleton, May 11, 1950.

three cents for each dollar collected under workmen's compensation.

The National Council on Compensation has somewhat different figures for 1948. These are probably more accurate. Table XIII will show the New Mexico experience for the past few years as tabulated by the National Council on Compensation Insurance.

Table XIII shows a gradual dropping below the permissable loss ratio of .600 for the period 1946-49. This is, of course, the fundamental reason for the current decrease in New Mexico rates.

As has been noted, Mountain States Mutual Casualty Company writes the greatest amount of workmen's compensation insurance in New Mexico. Table XIV gives a comparison of the three largest writers of workmen's compensation in New Mexico for the year 1948.

From Table XIV one sees that Mountain States Mutual collected over nineteen percent of total premiums reported in the Superintendent's files for 1948. The three companies together collected thirty-nine percent of the total premiums. Mountain States Mutual paid out approximately thirty-three percent of premiums collected for losses. When losses and dividends are added, the company paid out approximately fifty-three percent of total premiums. Globe Indemnity paid out only four percent of total premiums and no dividends, since it is not a mutual company. The American Employers' paid out approximately forty-nine percent of total premiums for the same period.

The Mountain States Mutual insures the State Highway Commission.[56] It also insures many construction companies. Globe Indemnity had in

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55 R. F. Apodaca, Interview, June 21, 1950.

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[58] R. F. Apodaca, Interview, June 21, 1950.

TABLE XIV

THREE LARGEST WRITERS OF WORKMEN'S COMPENSATION POLICIES IN NEW MEXICO IN 1948[56]

| Company | Premiums | Losses | Dividends |
|---|---|---|---|
| Mountain States Mutual Casualty Co. | $ 617,370 | $ 202,450 | $ 126,265 |
| Globe Indemnity Company | 419,759 | 15,538 | None |
| American Employers' Insurance Company | 209,732 | 104,015 | None |

[56] R. F. Apodaca, Superintendent of Insurance, Files, June 21, 1950.

TABLE XIV

THREE LARGEST WRITERS OF WORKMEN'S COMPENSATION POLICIES IN NEW MEXICO IN 1918

| Company | Premiums | Losses | Dividends |
|---|---|---|---|
| Mountain States Mutual Casualty Co. | $ 617,370 | $ 202,190 | $ 124,263 |
| Globe Indemnity Company | 419,779 | 15,592 | None |
| American Employers' Insurance Company | 209,772 | 100,015 | None |

[26] E. E. Apodaca, Superintendent of Insurance, Letter, June 21, 1920.

1948 the major share of the workmen's compensation insurance on Los Alamos. The risks insured by American Employers' are unknown to the writer.

In the Albuquerque area, the only companies found to be insuring state risks were the Mountain States Mutual, carrying the State Highway Commission, and the Victor Insurance Agency, 201 N. Second, Albuquerque, which insures some of the state hospitals and institutions.[57]

In 1949 the state legislature of New Mexico raised the weekly benefits payable to injured workers to twenty-five dollars from twenty-two dollars. Also, provisions for the coverage of extra-territorial workers were added. This raising of benefits called for an increase of approximately seven percent of rates.[58] This gives some indication of the cost of increased benefits, assuming constant experience.

Insurance companies appear to enforce a certain degree of safety by varying the rate on their policies according to the company's experience with accidents. Some insurance companies maintain an inspection routine particularly for industrial plants having more than the usual number of accidents. The writers of insurance are made very conscious of needed safety measures through their various publications and make an effort to secure the cooperation of management. Insurers have one powerful weapon to wield if they so desire. They can refuse to carry the employer's risk. This has been the case for most coal

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[57] Mr. Beal, Workmen's Compensation Clerk, Victor Agency, Interview, June 20, 1950.

[58] R. F. Apodaca, Interview, June 21, 1950.

1948 the major share of the workmen's compensation business on new Alamos. The rides insured by American Employers' are unknown to the writer.

In the Albuquerque area, the only companies found to be insuring state rides were the Mountain States Agency, carrying the State Highway Commission, and the Victor Insurance Agency, for N. Kenny, Albuquerque, which insures some of the state vehicles and insures drivers.[57]

In 1949 the state legislature of New Mexico raised the weekly benefits payable to injured workers to twenty-five dollars from twenty-two dollars. Also, provisions for the coverage of cross-burnt-out workers were added. This raising of benefits called for an increase of approximately seven percent of premiums.[58] This gives some indication of the cost of increased benefits, assuming comparable experience.

Insurance companies appear to endorse a certain degree of safety by varying the rate on their policies according to the company's experience with accidents. Some insurance companies establish an inspection rating particularly for unmanned plants having more than the usual number of accidents. The writers of insurance are made very conscious of needed safety measures through their various outlays and make an effort to ensure the cooperation of management. Insurers have one powerful weapon to wield if they so desire. They can refuse to carry the employer's risk. This has been the case for most coal

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[57] Mr. Dean, Workmen's Compensation Clerk, Victor Agency, Interview, June 20, 1950.

[58] E. F. Andrews, Interview, June 6, 1950.

TABLE XV

INDUSTRIAL INJURY EXPERIENCE, 1940[59]

| Industry | No. of establishments | No. of employees | Total Disabling Injuries | Total Lost Days | Rates(*) Frequency | Rates(*) Severity |
|---|---|---|---|---|---|---|
| All States: | | | | | | |
| Lumber, lumber products and furniture: | | | | | | |
| Logging | 420 | 27,972 | 4,825 | 776,388 | 101.2 | 16.3 |
| Planing mills | 1,101 | 55,957 | 3,943 | 329,283 | 35.6 | 3.0 |
| Sawmills | 911 | 58,872 | 4,908 | 544,795 | 46.3 | 5.1 |
| Furniture (not metal) | 945 | 81,843 | 2,985 | 344,925 | 18.8 | 2.2 |
| Furniture (metal) | 64 | 11,746 | 474 | 41,090 | 18.8 | 1.6 |
| Partitions, etc. | 116 | 5,473 | 204 | 14,010 | 19.0 | 1.3 |
| Morticians' supplies | 36 | 2,516 | 79 | 16,358 | 16.1 | 3.3 |
| N.O.C. | 502 | 37,295 | 2,307 | 238,115 | 31.9 | 3.3 |
| New Mexico: | | | | | | |
| Lumber, lumber products, furniture (no breakdown) | 10 | 734 | 100 | 19,815 | 79.9 | 15.8 |
| Arizona: | | | | | | |
| Lumber, etc. (no breakdown) | 10 | 984 | 113 | 8,674 | 56.6 | 4.3 |

(*) Rates: Frequency rate - average number of disabling injuries for each million employee-hours worked;
Severity rate - average number of days lost for each thousand employee-hours worked, (a standard method is used for fatalities and permanent disabilities).

59 Max D. Kossoris, Division of Industrial Accident Statistics, Industrial Injury Statistics By States (U.S. Dept. of Labor, Bureau of Labor Statistics, Bulletin #700, Washington, 1942).

TABLE XV

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| Industry | No. of establishments | No. of man-months | Total disabling injuries | Total lost days | Rates(*) Frequency | Rates(*) Severity |
|---|---|---|---|---|---|---|
| All States: | | | | | | |
| Lumber, lumber products and furniture: | | | | | | |
| Logging | 420 | 27,972 | 4,825 | 776,388 | 101.2 | 16.3 |
| Planing mills | 1,101 | 55,997 | 7,943 | 329,283 | 85.6 | 3.0 |
| Sawmills | 911 | 58,872 | 4,908 | 384,795 | 66.3 | 5.1 |
| Furniture (not metal) | 945 | 61,843 | 2,985 | 344,925 | 18.9 | 2.2 |
| Furniture (metal) | 64 | 14,746 | 474 | 41,090 | 16.8 | 1.6 |
| Partitions, etc. | 116 | 5,423 | 204 | 14,010 | 19.0 | 1.9 |
| Novelties, supplies | 36 | 2,316 | 79 | 16,958 | 16.1 | 3.3 |
| N.O.O. | 542 | 37,285 | 2,307 | 238,115 | 31.9 | 3.3 |
| New Mexico: | | | | | | |
| Lumber, lumber products, furniture (no breakdown) | 10 | 734 | 100 | 19,815 | 72.9 | 15.8 |
| Arizona: | | | | | | |
| Lumber, etc. (no breakdown) | 10 | 984 | 113 | 8,474 | 56.6 | 4.3 |

(*) Rates: Frequency rate - average number of disabling injuries for each million employee-hours worked;
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59 Max D. Kossoris, Division of Industrial Hygiene Statistics, Industrial Injury Statistics for States (U.S. Dept. of Labor, Bureau of Labor Statistics, Bulletin #700, Washington, 1942).

mines in the state and for many saw mills and butane gas operations, which are all extremely hazardous from the viewpoint of insurance companies. Table XV, although of limited value, may help to illustrate why saw mills are generally unable to get insurance in New Mexico.

In Table XV the industrial injury experience is given for industries producing lumber and its products. This group of industries was chosen for this comparison because the pamphlet cited gave no statistics in any other category for New Mexico or Arizona. This comparison gives an indication of where these states lie in relation to the national experience. Furthermore, the comparison shows the variation in injury experience between New Mexico and Arizona for this group of industries. Since the number of injuries influences the rates to be paid on workmen's compensation insurance policies, the safety records of these two states play an important role in determining the premium an employer must pay to provide the statutory benefits of the state in which he is operating.

Arizona requires the payment of benefits greatly in excess of those paid in New Mexico. Therefore, the rates charged in Arizona should logically be above the rates charged by insurance companies in New Mexico. However, by careful regulation of safety conditions, the Arizona State Fund and private insurance companies may be capable of paying greater benefits than those in New Mexico without charging the rates New Mexico firms would be forced to adopt if benefits paid in New Mexico were to be raised to the Arizona level without regulations improving safety conditions. Furthermore, if fewer accidents occur in

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a state's industries than the national average, the state could require a given benefit schedule at less cost to the employer than would be the case in those states with average or above average accident records. The presence, or lack of, safety measures and safety education can have a significant effect upon workmen's compensation rates.

Table XV has limited use because of the wide range of accident rates within the category given. Nonetheless, Arizona is seen to have a better industrial safety record for the lumber products category as a whole than does New Mexico.

By using the figures given in the table, the author computed the frequency rate for the lumber products category on a national basis to be slightly less than thirty-seven. By a similar procedure the severity rate is computed to be approximately four and three-tenths.

By examining Table XV and using the above figures, New Mexico can be seen to have had a frequency rate that is twice that of the nation and a severity rate three times the national rate. Arizona had a frequency rate considerably above the national norm, but a severity rate equal the national figure. For 1940, Arizona had a considerably better safety record than New Mexico for this particular category.

As was mentioned, Table XV helps to illustrate why saw mills have trouble getting workmen's compensation insurance. Another reason for failure on the part of insurance companies to carry saw mills in this area is because of the distance of these plants from medical care.[60]

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[60] Mr. T. Pettie, Claims Adjustor, Hartford Indemnity Co., Albuquerque, New Mexico, Interview, June 19, 1950.

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[60] Mr. T. Pettis, Claims Adjuster, Hartford Indemnity Co., Albuquerque, New Mexico, Interview, June 19, 1950.

This problem is keen in New Mexico for both saw mills and coal mines. Possibly in an effort to improve their safety record and possibly for some other reason many saw mills fail to rehire injured workers.[61]

Besides improving safety conditions, another method of achieving a lower loss ratio is by underpaying or failing to pay the claimant. It is hoped this latter procedure is not followed often, but there is some indication that it is being done to a limited extent. One claims adjustor interviewed was of the opinion this was done and was certain it would be easy to do, because of the lack of information about the law on the part of the workers.[62] When lump sum settlements are made, they are generally less than the full amount. Some companies do not make lump sum settlements, but prefer to pay weekly benefits, believing this to be more in keeping with the purpose of the law; however, some companies are glad to settle a claim by making a lump sum settlement.

Usually a company will want to dispose of a case within a year, for their losses can be written off in making tax returns. Consequently during a prosperous period companies will usually settle quickly. For all pending cases, contingent liability funds are set up and if cases go unsettled for a long time, the capital structure of the company becomes unbalanced.[63] Consequently, if these cases can be settled and removed from the books, the company's financial position is eased.

Generally, representatives of insurance companies and adjustors

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61 Judge R. F. Deacon Arledge, Interview, June 14, 1950.

62 Source cannot be disclosed.

63 Arledge, loc. cit.

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63 Arledge, loc. cit.

who were interviewed evidenced satisfaction with the present system. One insurance company adjustor has written only five or six letters to the Labor Commissioner in twelve years and would prefer a continuation of limited supervision. This illustrates the lack of control typical under the New Mexico Workmen's Compensation Act.

The statutory provisions of the New Mexico Workmen's Compensation Act appear fairly adequate. Under court administration, when the court has an opportunity to act, the worker may be given fair treatment. However, the court generally allows lump sum payments and these as a rule appear to be below the limit, especially in cases involving permanent total disability. Of the many cases settled without the aid of the court, low awards are easily possible and may occur because of the general lack of knowledge on the part of workers of their rights under workmen's compensation.

The administrative procedures of the New Mexico Workmen's Compensation Act are inadequate. Safety regulations are absent. Reports of accidents are frequently late. Some accidents may never be reported. Education of workers regarding benefits available under workmen's compensation is inadequate.

This is largely the result of lack of legislative enactment and lack of legislative appropriation. The safety record in this state is largely the result of the efforts of insurance companies and employers, with little or no guidance or direction from the administration. An adequate evaluation of results is impossible because of the lack of coordination.

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The fault for this would appear to rest largely within the Workmen's Compensation Act as it is now written. Further, the lack of legislative appropriation for the Office of Labor Commissioner prevents such functions from being adequately performed.

Classification of responsibility under the Workmen's Compensation Act is needed. Greater appropriations for the Office of the Labor Commissioner are required. If these two suggestions were followed, the duties of the Labor Commissioner could be properly performed and the responsibility for performance could clearly be determined.

Examination of the administration of workmen's compensation in New Mexico reveals inadequate performance. The next chapter will attempt to reveal some information regarding the extent of coverage in New Mexico and the knowledge of the Act possessed by a small group of workers.

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## CHAPTER IX

## EXTENT, COST, AND KNOWLEDGE OF COVERAGE UNDER NEW MEXICO WORKMEN'S COMPENSATION ACT

Largely because of the administrative deficiencies noted in the previous chapter, the extent to which workmen's compensation insurance is carried by employers is unknown. In an effort to get an estimate of the number of workers and number of employers probably covered by workmen's compensation insurance, the author has constructed Table XVI. This table may be greatly in error. However, it is the best estimate that one can make in view of the absence of data.

For this table, the number of employers and of employees was taken from the Monthly Bulletin of the Employment Security Commission of New Mexico for April 1950. These monthly reports include the total number of employers paying the unemployment insurance tax and the total number of workers in these employments. Although this data may not include all the employers in the state, it gives the best figures on the number of employers and of employees in New Mexico that are currently available.

From information gathered in interviews it appears reasonable to assume that the industries engaged in construction, manufacturing and mining other than coal probably carry workmen's compensation insurance. These groups represent twenty-two percent of the total number of units given in the table. These categories had thirty-eight percent of the total number of workers. One may conclude, then,

## CHAPTER IX

## BENEFIT, COST, AND INCIDENCE OF ESTIMATES UNDER NEW MEXICO WORKMEN'S COMPENSATION ACT

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TABLE XVI

ESTIMATE OF WORKMEN'S COMPENSATION COVERAGE IN NEW MEXICO[1]

Industries Probably Carrying Workmen's Compensation Insurance

| Type of Business | No. of Units | No. of Workers |
|---|---|---|
| Construction | 1,315 | 16,114 |
| Manufacturing | 577 | 9,624 |
| Mining not coal | 424 | 9,545 |
| Totals | 2,316 | 35,283 |

Industries Which May or May not be Carrying Workmen's Compensation Insurance

| | | |
|---|---|---|
| Transportation | 455 | 7,109 |
| Trade | 4,786 | 30,164 |
| Finance | 539 | 3,221 |
| Service | 2,359 | 15,409 |
| N. E. C. | 214 | 1,257 |
| Totals | 8,352 | 57,160 |

Industries Probably Carrying No Workmen's Compensation Insurance

| | | |
|---|---|---|
| Agriculture | 64 | 313 |
| Coal Mines | 24 | 1,074 |
| Totals | 88 | 1,387 |

[1] Author's estimate. Figures from: Monthly Bulletin, Employment Security Commission, New Mexico, April 1950.

TABLE XVI

ESTIMATE OF WORKMEN'S COMPENSATION COVERAGE IN NEW MEXICO[1]

Industries Probably Carrying Workmen's Compensation Insurance

| Type of Business | No. of Units | No. of Workers |
|---|---|---|
| Construction | 1,325 | 16,114 |
| Manufacturing | 577 | 9,658 |
| Mining not coal | 424 | 9,595 |
| Totals | 2,316 | 35,267 |

Industries Which May or May not be Carrying Workmen's Compensation Insurance

| | | |
|---|---|---|
| Transportation | 455 | 7,109 |
| Trade | 4,785 | 20,164 |
| Finance | 579 | 5,221 |
| Service | 2,359 | 15,409 |
| N. E. C. | 214 | 1,257 |
| Totals | 8,352 | 57,160 |

Industries Probably Carrying No Workmen's Compensation Insurance

| | | |
|---|---|---|
| Agriculture | 64 | 319 |
| Coal Mines | 24 | 1,074 |
| Totals | 88 | 1,387 |

[1] Author's estimate. Figures from Monthly Bulletin, Employment Security Commission, New Mexico, April 1950.

that probably twenty-two percent of the business units and thirty-eight percent of the employees of New Mexico are covered by workmen's compensation insurance.

Those industries in Table XVI that are listed as probably not covered by workmen's compensation insurance represent one percent of the employers and about one percent of the employees. Thus ninety-nine percent of the employers and workers in New Mexico may be covered by workmen's compensation insurance, or only twenty-two percent of the employers and only thirty-eight percent of the employees may be covered. There appears to be no way to determine how many of the middle group including the areas of transportation, trade, finance and services are covered. This group represents seventy-seven percent of the employers given and sixty-one percent of the employees. Some, possibly many, of these businesses probably carry workmen's compensation insurance.

Table XVII gives the cost of workmen's compensation insurance for six firms selected at random in Albuquerque. These costs are not broken down by occupational groupings, as a comparison of this sort will be undertaken later. The table shows the cost of workmen's compensation insurance for the business as a whole. For example, a laundry would pay fifty cents on every one hundred dollars of payroll. If a breakdown of payments by job classifications were given, the variations of rates would be great, but this would tell nothing of the total cost of the workmen's compensation insurance policy to the company as the total cost depends upon the number of employees in each class. Here one sees the cost to the company only. The variations

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TABLE XVII

COST OF WORKMEN'S COMPENSATION AS A PERCENT OF PAYROLL FOR SIX FIRMS IN THE ALBUQUERQUE AREA[2]

| Type of Business | Payroll Costs for Compensation for Business as a Whole |
|---|---|
| Laundry | $0.50 per $100 |
| Contractor | $2.00 per $100 |
| Lumber, plumbing and hardware | $3.90 per $100 |
| Men's retail clothing | $0.33 per $100 |
| Women's retail clothing | $0.65 per $100 |
| Concrete manufacturing and general hauling | $2.00 per $100 |

[2] Information obtained by interviews, June, 1950.

TABLE XVII

COST OF GROUP'S COMPENSATION AS A PERCENT OF PAYROLL FOR SIX FIRMS IN THE ALBUQUERQUE AREA[2]

| Type of Business | Payroll Costs for Compensation for Business as a Whole |
|---|---|
| Laundry | $0.50 per $100 |
| Contractor | $2.00 per $100 |
| Lumber, plumbing and hardware | $3.90 per $100 |
| Men's retail clothing | $0.33 per $100 |
| Women's retail clothing | $0.55 per $100 |
| Concrete manufacturing and general hauling | $2.00 per $100 |

[2] Information obtained by interviews, June, 1950.

in cost from firm to firm are largely due to the number of employees working in hazardous occupations. This variation is not the cause of the different rates for the two businesses engaged in selling clothing at retail. Here the difference probably lies in the experience ratings of the two stores, for there is no difference in rates published in the manual. Women are not considered poorer insurance risks than men. Costs of workmen's compensation insurance are not a large percentage of the cost of doing business for the firms examined. Furthermore, no statement was made during interviews which would lead one to believe the costs of complying with the Workmen's Compensation Act are high. The accountant pays the premium when it falls due and the matter is settled. Of these six firms, at least, none was suffering from the high cost of workmen's compensation insurance.

To determine the extent of employees' knowledge of the New Mexico Workmen's Compensation Act, sixty-nine employees of various business establishments were interviewed during June and July of 1950. These businesses were engaged in 1) construction, 2) lumbering and hardware, 3) concrete mixing and general hauling, 4) laundry, wet and dry work, 5) retail sales of a general nature on a nation-wide level, 6) men's clothing sales, locally, and 7) women's clothing sales, locally. The questions asked and the responses given can be seen in Appendix C.

Of the sixty-nine workers interviewed, only thirty had any sort of a reply to the question, "What will the Workmen's Compensation Act do for a worker?" Of these thirty, three thought it was included as a

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Of the sixty-nine workers interviewed, only thirty had any sort of a reply to the question, "What will the Workmen's Compensation Act do for a worker?" Of these thirty, three thought it was included as a

part of the Social Security Act and one thought it to be part of an omnibus bill covering practically everything related to working conditions. The remaining twenty-six persons gave responses showing anything from very limited to fairly detailed knowledge of the Act.

Only forty-two of the sixty-nine were certain they had ever heard of the Workmen's Compensation Act. Twenty-one were positive they had never heard of such an Act and the remaining six were not sure whether they had heard of it or not. Twenty-two of the sixty-nine people interviewed were union members. Of these, fifteen were certain they had heard of the Act and five had never heard of it. Four of these five were laborers and one was an apprentice carpenter. Of the fifteen who had heard of the Act one was a foreman, twelve were carpenters, one was a truck driver and one was a laborer.

Table XVIII shows the percent of union and non-union workers interviewed who had heard of the Workmen's Compensation Act. It is seen that union workers were better informed on this subject than non-union workers. However, the union members did not attribute their knowledge of the Act to any effort on the part of local union leaders to acquaint them with the protection afforded workers by the Act.

The sources of information for the forty-two who had heard of workmen's compensation are interesting. Table XIX shows these sources.

New Mexico may thank seven states for informing a portion of the workers interviewed about their workmen's compensation laws. This caused an awareness of the law. The workers then learned of the New

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TABLE XVIII

EMPLOYEES WHO HAD HEARD OF THE WORKMEN'S COMPENSATION ACT[3]

| | No. Interviewed | No. Who Had Heard of Act | Percentage of Those Who Had Heard |
|---|---|---|---|
| Union | 22 | 15 | 68% |
| Non-union | 47 | 27 | 57% |

TABLE XIX

SOURCES THROUGH WHICH A KNOWLEDGE OF WORKMEN'S COMPENSATION WAS OBTAINED[4]

| | |
|---|---|
| Read of the law somewhere | 8 |
| Told about it by friends | 5 |
| Read the law of California | 1 |
| Told by the State Commissioner of Minnesota | 1 |
| Told by the Union in Nevada | 1 |
| Told about it while working in coal mines at Silver City, N.M. | 1 |
| Told by union leader in New York | 1 |
| Read the store's insurance policy | 1 |
| Told by union in Kentucky | 1 |
| Told by economics teacher in A.H.S. | 1 |
| Read plant posters in Arkansas | 1 |
| Told by store officials | 2 |
| Told by union in California | 1 |
| Told by union in Ohio | 1 |
| Told by sociology teacher at U.N.M. | 1 |
| Don't remember | 12 |
| Read pamphlet put out by company | 3 |
| Informed by a New Mexico union | 0 |
| Informed by the Labor Commissioner | 0 |

[3] Interviews, June-July 1950.

[4] Ibid.

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EMPLOYEES WHO HAD HEARD OF THE WORKMEN'S COMPENSATION ACT[3]

| | No. Interviewed | No. Who Had Heard of Act | Percentage of Those Who Had Heard |
|---|---|---|---|
| Union | 22 | 15 | 68% |
| Non-union | 47 | 27 | 57% |

TABLE XIX

SOURCES THROUGH UNION A KNOWLEDGE OF WORKMEN'S COM-PENSATION WAS OBTAINED[4]

| | |
|---|---|
| Read of the law somewhere | 8 |
| Told about it by friends | 5 |
| Read the law of California | 4 |
| Told by the State Commissioner of Minnesota | 1 |
| Told by the Union in Nevada | 1 |
| Told about it while working in coal mines at Silver City, N.M. | 1 |
| Told by union leader in New York | 1 |
| Read the store's insurance policy | 1 |
| Told by union in Kentucky | 1 |
| Told by economics teacher in A.H.S. | 1 |
| Read plant posters in Arkansas | 1 |
| Told by store officials | 2 |
| Told by union in California | 1 |
| Told by union in Ohio | 1 |
| Told by sociology teacher at U.M.M. | 1 |
| Don't remember | 12 |
| Read pamphlet put out by company | 2 |
| Informed by a New Mexico union | 0 |
| Informed by the Labor Commissioner | 0 |

[3] Interviews, June-July 1950.

[4] Ibid.

Mexico Act while working here. One notes that none of the employees interviewed could ever remember being told of the law by either the local union or the Labor Commissioner. Although nothing in the law requires it, one of the firms interviewed maintains an indoctrination program for its workers during which they are informed of various benefits provided by the company and by the state and federal laws. This indoctrination occurs at the beginning of the service with the firm and the information gathered may be soon forgotten, but this employer was the only one of the group interviewed who maintained any sort of an educational policy.[5] If New Mexico expects the benefits provided under the Workmen's Compensation Act to be received the state might well begin by informing workers of their rights, if this sampling of businesses is any indication of what is to be expected throughout the state.

Table XX shows the percentage of those workers interviewed by business unit who had any knowledge of the Workmen's Compensation Act. Those engaged in retail selling and in construction generally had a better knowledge of the Act than did the other groups. This sample is too limited in its extent to be used as a basis for prediction, but it is easily noted that the workers had an extremely limited knowledge of the Workmen's Compensation Act at the time of interview.

This chapter has given the author's estimate of the extent to which workmen's compensation insurance is probably carried in New

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[5] Miss Velda Messersmith, Assistant Personnel Manager, J. C. Penney Co., Albuquerque, New Mexico, Interview, June 22, 1950.

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TABLE XX

EMPLOYEES' KNOWLEDGE OF WORKMEN'S COMPENSATION ACT

BY BUSINESS UNITS[6]

| Type of Business and Number Interviewed | Percentage Male | Percentage Female | Percentage Interviewed Who Had Heard of the Act | Percentage Who Had Some Idea of What W.C. Would Do for a Worker |
|---|---|---|---|---|
| Construction (6)* | 100 | 0 | 50 | 33-1/3 |
| Construction (10)* | 100 | 0 | 70 | 70 |
| Construction (6)* | 100 | 0 | 83 | 33-1/3 |
| Laundry (10) | 30 | 70 | 40 | 30 |
| Nation-wide retail store (10) | 70 | 30 | 80 | 70 |
| Local men's clothing store (2) | 0 | 100 | 100 | 50 |
| Local women's clothing store (5) | 20 | 80 | 100 | 40 |
| Lumber company (10) | 100 | 0 | 50 | 30 |
| Concrete manufacture and hauling (10) | 100 | 0 | 30 | 20 |

*Two separate construction firms. The two groups with six each were disassociated projects under the same company.

[6] Information obtained by interviewing employees during June and July of 1950. Responses are listed according to types of business units. Detailed replies of the workers are given in Appendix C.

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|---|---|---|---|---|
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| Construction (10)* | 100 | 0 | 70 | 70 |
| Construction (6)* | 100 | 0 | 83 | 33-1/3 |
| Laundry (10) | 30 | 70 | 40 | 30 |
| Nation-wide retail store (10) | 70 | 30 | 80 | 70 |
| Local men's clothing store (3) | 0 | 100 | 100 | 50 |
| Local women's clothing store (5) | 20 | 80 | 100 | 40 |
| Lumber company (10) | 100 | 0 | 50 | 30 |
| Concrete manufacture and hauling (10) | 100 | 0 | 30 | 20 |

*Two separate construction firms. The two groups with six each were disassociated projects under the same company.

[6] Information obtained by interviewing employees during June and July of 1930. Responses are listed according to types of business units. Detailed replies of the workers are given in Appendix C.

Mexico. It has illustrated that for those business units examined, workmen's compensation insurance is not a significant cost factor. Also, the workers interviewed have shown a poor knowledge of the New Mexico Workmen's Compensation Act. Chapter X will compare awards for injuries made in Arizon with those made in New Mexico. Also a comparison of the workmen's compensation insurance rates paid in the two states will appear.

## CHAPTER X

## AWARDS FOR INJURIES UNDER WORKMEN'S COMPENSATION AND WORKMEN'S COMPENSATION RATES IN NEW MEXICO AND ARIZONA

The New Mexico Act has been seen to have many shortcomings. These can be remedied. In order to show what might be possible in New Mexico, a contrast of awards made in New Mexico and of awards made in Arizona will be undertaken. For the reasons given previously the Workmen's Compensation Act of Arizona can be used as a yardstick for measuring the New Mexico Act. Some discussion of the Arizona Act will be undertaken for the purpose of showing what has been done in a state similar to New Mexico and to show what might be done in New Mexico if the state wanted a more liberal workmen's compensation act.

Arizona insures workmen's compensation risks through a state fund. Very few private insurance companies operate in Arizona on account of the high workmen's compensation awards made to injured workers.[1] In 1948 the highest award for a fatal injury in Arizona was for the sum of $57,992.67. In 1947 the highest award for permanent total disability was $71,910.82.[2] New Mexico statutory provision for awards of a similar nature would allow a maximum of twenty-five dollars a week for 550 weeks, a total sum of $13,750.

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[1] T. Pettie, Claims Adjustor, Hartford Accident & Indemnity Company, Interview, June 19, 1950.

[2] Annual Report to the Governor for Calendar Year 1948 (Industrial Commission of Arizona, Phoenix, Arizona, August 15, 1949), p. 41.

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[2] Annual Report to the Governor for Calendar Year 1948 (Industrial Commission of Arizona, Phoenix, Arizona, August 15, 1949), p. 41.

In Table XXI awards made by the Industrial Commission of Arizona are contrasted with awards made in New Mexico District Court No. 2. An effort has been made to compare the awards as fairly as possible. There is no way to determine the exact extent of the injuries to the individual worker other than by accepting the description given in the case. This may not be a fair description but is the only available data.

The Arizona awards were awards made for non-scheduled injuries by the Commission prior to April 1, 1947. A non-scheduled injury is an injury which is not listed in the workmen's compensation statute. Many injuries of this type occur. For an injury of this nature the employee, under the Arizona Act, is compensated on the basis of fifty-five percent of his loss of earning power, not on the basis of a percentage of former wages.[3] This will be explained later.

A scheduled injury is one specifically set forth in the statute, such as eye injuries, leg injuries and others. For this type of injury the Arizona workman can be awarded a maximum permanent compensation of fifty-five percent of the earnings received prior to injury for a specified number of months. If disability is less than one hundred percent permanent total disability, the injured man receives compensation for that portion of the maximum period of months indicated as his percentage of disability bears to one hundred percent disability.[4]

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[3] J. J. O'Neill, Chairman, The Industrial Commission of Arizona, Letter and Enclosure to Hon. Fred J. Fritz, Chairman, Special Legislative Committee on State Operations, November 2, 1949, p. 2.

[4] Loc. cit.

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[2] J. J. O'Neill, chairman, The Industrial Commission of Arizona, letter and enclosure to Rep. Fred A. Talle, Chairman, Special Legislative Committee on State Operations, November 5, 1949, p. 2.

[3] Ibid., p. 2.

The second type of injury covers all those not specifically listed in the first category and is called non-scheduled injuries. For these the Arizona employee is not compensated on the basis of his former wages but on the basis of fifty-five per cent of his loss of earning power. to determine loss of earning power the Commission must determine the employee' earning capacity after his injury. It follows that the more a worker earns after injury the less will be his compensation, or the less he earns the greater will be his compensation.[5] The Arizona Commission cannot control the worker's mental attitude, nor can it force him to return to work. Under the present Arizona law the only limit on compensation for non-scheduled injuries is the claimant's willingness or ability to return to work. Efforts of the Commission to adopt a schedule for rating non-scheduled injuries have been unsuccessful becasue of rulings of the Arizona State Supreme Court.[5a] These non-scheduled injuries are the source of the greatest drain upon the state insurance fund. Payments for non-scheduled disabilities have no maximum limit as do payments for scheduled disabilities and may continue for the life of the claimant. Also a worker may have a non-scheduled disability resulting in twenty per cent physical impairment, but because of the nature of the injury the worker may be one hundred per cent disabled so far as doing his former job is concerned.[6]

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5 O'Neill, loc. cit.

5a Hoffman v. Brophy, 149 P. (2d) 160, Kennecott Copper Co., v. Industrial Commission of Arizona, 158 P.(2d) 837.

6 O'Neill, loc. cit.

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5 O'Neill, loc. cit.

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6 O'Neill, loc. cit.

TABLE XXI

CONTRAST OF AWARDS FOR INJURIES UNDER WORKMEN'S COMPENSATION ACTS OF ARIZONA AND NEW MEXICO[7]

| Type | Arizona: Commission (Lump Sum) | Arizona: Hypothetical Court Award* | New Mexico District Court No.2 | N.Mex. Awards as a Percentage of Ariz.'s |
|---|---|---|---|---|
| Back injury | $2,531.83 | $14,703.94 | $1,830 | 46% ** |
| Fractured vertebrae | 7,921.52 | 19,747.60 | 2,360<br>1,377<br>450 | 18% |
| Multiple injuries | 1,556.92 | 13,729.19 | No compensable injury | |
| Multiple injuries | 7,316.05 | 13,515.23 | 4,864 | 76% ** |
| Back injury | 6,221.65 | 39,379.70 | 942 | |
| Fractured jaw, ribs, etc. | 2,109.98 | 11,310.21 | 400<br>1,063 | 35% |
| Back injury | 1,993.51 | 7,096.66 | 235 | |
| Back injury | 3,342.48 | 6,842.13 | 3,496 | |
| Multiple injuries | 3,662.78 | 10,250.28 | 1,464 | |
| Head, shoulder and neck injuries | 5,319.33 | 15,167.19 | 3,360<br>300 | 35% |
| Fractured wrist and other injuries | 9,136.42 | 19,525.35 | 286 | 3% |

* Since these are non-scheduled injuries, this column represents what would have been granted had the Supreme Court decisions on this matter been followed. This is explained in the text.

** These figures represent aggregate of injuries in these particular categories.

[7] O'neill, loc. cit.

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| Type | Arizona: Commission (Lump Sum) | Arizona: Hypothetical Court Award* | New Mexico: District Court No.2 | N.Mex. Awards as a Percentage of Ariz.'s |
|---|---|---|---|---|
| Back injury | $4,351.83 | $14,703.94 | $1,810 | 46% ** |
| Fractured vertebrae | 7,921.52 | 19,717.60 | 2,360<br>1,377<br>450 | 18% |
| Multiple injuries | 1,556.92 | 13,729.19 | No compensable injury | |
| Multiple injuries | 7,310.05 | 13,315.23 | 4,804 | 70% ** |
| Back injury | 6,221.65 | 39,379.70 | 912 | |
| Fractured jaw, ribs, etc. | 2,109.98 | 11,310.21 | 400<br>1,053 | 35% |
| Back injury | 1,993.31 | 7,096.66 | 335 | |
| Back injury | 3,342.16 | 6,812.13 | 3,496 | |
| Multiple injuries | 3,662.78 | 10,230.28 | 1,464 | |
| Head, shoulder and back injuries | 5,319.33 | 15,167.19 | 3,860<br>300 | 73% |
| Fractured wrist and other injuries | 9,136.42 | 19,525.35 | 286 | 3% |

* Since these are non-scheduled injuries, this column represents what would have been granted had the Supreme Court decisions on this matter been followed. This is explained in the text.

** These figures represent aggregate of injuries in these particular categories.

[7] O'Neill, loc. cit.

For the cases given in Table XXI the Arizona Commission followed the procedure of basing awards upon a percentage of actual disability rather than on loss of earning power. The column showing probable court awards is based upon the loss of earning power decisions given by the Arizona court. The difference is very significant.

Table XXI shows awards for injuries in Arizona and contrasts these with awards for similar injuries in New Mexico. The New Mexico cases for the period August 25, 1948, to September 15, 1949, were carefully selected according to the description of the injury given in the case so as to parallel as closely as possible those injuries listed for Arizona. Of course, some variation exists. Workmen's compensation cases going to court are usually shrouded in doubt, as has been noted, so a low award for one injury does not mean an unfair award. However, when awards are consistently low one may question the procedure. Here, however, the interest in this contrast rests in the percentage variation and the sum variations between the two states. New Mexico awarded considerably less than Arizona for all categories given.

Table XXII lists the claims handled by the state. This itemization is much more detailed than is the report for New Mexico. For the fiscal year ending 1948 New Mexico had 2,903 compensation cases reported to the Labor Commissioner.[8] As can be seen from the table Arizona had 5,867 compensation awards for the calendar year 1948. This may indicate that more accidents occur in Arizona than in New Mexico, or it may

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[8] Eighteenth Annual Report (New Mexico State Labor and Industrial Commission, Santa Fe, New Mexico, July 18, 1948), p. 31.

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Table XXI shows awards for injuries in Arizona and contrasts these with awards for similar injuries in New Mexico. The New Mexico cases for the period August 29, 1948, to September 15, 1949, were carefully selected according to the description of the injury given in the case so as to parallel as closely as possible those injuries listed for Arizona. Of course, some variation exists. Workmen's compensation cases going to court are usually shrouded in doubt, as has been noted, so a low award for one injury does not mean an unfair award. However, when awards are consistently low one may question the procedure. Here, however, the interest in this contrast rests in the percentage variation and the sum variations between the two states. New Mexico awarded considerably less than Arizona for all categories given.

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[8] Eighteenth Annual Report (New Mexico State Labor and Industrial Commission, Santa Fe, New Mexico, July 18, 1948), p. 31.

TABLE XXII

STATISTICS ON CLAIMS HANDLED BY ARIZONA UNDER WORKMEN'S COMPENSATION[9]

| | | | |
|---|---|---|---|
| Total claims handled by Claims Dept. | | | 28,698 |
| Fund Cases | | 25,575 | |
| Workmen's compensation cases | 25,117 | | |
| Occupational disease disability cases | 458 | | |
| Non-fund Cases | | 3,123 | |
| Non-compensable | 1,811 | | |
| No time lost | 1,028 | | |
| Time list | 260 | | |
| Occupational disease disability cases | 19 | | |
| Fatalities | 5 | | |
| Additional claims reported by self-insurers for medical benefits only. Involved no compensable lost time. | | | 12,421 |
| Fund cases handled (above) | | | 25,575 |
| Workmen's compensation cases too minor for compensation | | 19,250 | |
| Workmen's compensation cases compensable awards | | 5,867 | |
| Temporary disability | 4,622 | | |
| Permanent partial disability | 1,245 | | |
| Occupational disease disablement cases | | 458 | |
| Death Claims | | | 84 |
| Compensable | | 78 | |
| Non-compensable | | 6 | |
| Awards for occupational disease disability fatalities | | | 10 |

[9] Annual Report to the Governor, Calendar Year 1948, Industrial Commission of Arizona, August 15, 1949.

TABLE XXII

STATISTICS ON CLAIMS HANDLED BY ARIZONA UNDER WORKMEN'S COMPENSATION[7]

| | | |
|---|---|---|
| Total claims handled by Claims Dept. | | 38,698 |
| Fund Cases | | 25,375 |
| Workmen's compensation cases | 23,117 | |
| Occupational diseases disability cases | 258 | |
| Non-fund Cases | | 3,129 |
| Non-compensable | 1,811 | |
| No time lost | 1,072 | |
| Time lost | 250 | |
| Occupational diseases disability cases | 17 | |
| Fatalities | 2 | |
| Additional claims reported by self-insurers for medical benefits only. Involved no compensable lost time. | | 10,124 |
| Fund cases handled (above) | | 25,375 |
| Workmen's compensation cases for minor for compensation | 19,230 | |
| Workmen's compensation cases disappeals awards | 5,867 | |
| Temporary disability | 4,622 | |
| Permanent partial disability | 1,245 | |
| Occupational disease disablement cases | 258 | |
| Death Claims | | 24 |
| Compensable | 16 | |
| Non-compensable | 8 | |
| Awards for occupational diseases disability fatalities | | 10 |

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[7] Annual Report to the Governor, Calendar Year 1952, Industrial Commission of Arizona, August 15, 1953.

be indicative of poor accident reporting by New Mexico employers and insurance companies. In view of the evidence examined so far the author is led to believe this to be indicative of poor reporting in New Mexico.

Table XXIII gives the expenses incurred by the Arizona State Insurance Fund. For 1948 the author computes the average award within the general class, which is the largest classification, for it includes the majority of private employers, to be $1,093. This is considerably above the average award of fifty-seven dollars paid by New Mexico.[10] A better basis for comparison would be the average amount of money paid per compensable day in each state, but this cannot be done for Arizona does not compute total compensable days.

The Accident Benefit Fund which is used by Arizona to pay medical benefits only was drawn upon for an average award of seventy-one dollars. The average award in New Mexico was $3.44 for the fiscal year 1947-48.[11] This again shows the wide gulf between benefits in New Mexico and benefits in Arizona.

It is also interesting to note that Arizona paid $1,640,194 as awards to dependents of workers receiving fatal injuries. When this is contrasted with the $165,910 paid by New Mexico for 2,903 compensable injuries, the variations in payments to injured workers within the two states is further accentuated.[12] Arizona paid during the

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[10] Eighteenth Annual Report, loc. cit.

[11] N. Wollman, op. cit., p. 15.

[12] Eighteenth Annual Report, op. cit., p. 31.

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The Accident Benefit Fund which is used by Arizona to pay medical benefits only was drawn upon for an average award of seventy-one dollars. The average award in New Mexico was $3.14, for the fiscal year 1947-48.[11] This again shows the wide gulf between benefits in New Mexico and benefits in Arizona.

It is also interesting to note that Arizona paid $1,610,192 as awards to dependents of workers receiving fatal injuries. When this is contrasted with the $145,920 paid by New Mexico for 2,905 compensable injuries, the variations in payments to injured workers within the two states is further accentuated.[12] Arizona paid during the

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[10] Eighteenth Annual Report, loc. cit.

[11] N. Wollman, op. cit., p. 34.

[12] Eighteenth Annual Report, loc. cit., p. 31.

TABLE XXIII

ARIZONA FUND EXPENSES, 1948[13]

Workmen's Compensation Insurance

| | No. of Claims | Value of Awards |
|---|---|---|
| General Class (private employments) | 4,687 | $5,124,493 |
| Self-Rater (private employers computing their own workmen's compensation rates and premiums) | Not given | 1,128,290 |
| Civics (political divisions) | Not given | 522,558 |
| Total | | $6,775,341 |

Accident Benefit Fund, 1948

| | | |
|---|---|---|
| General Class | 21,045 | $1,491,065 |
| Civics | 1,760 | 139,218 |
| Total | 22,805 | $1,630,283 |
| Compensable death | 78 | $1,640,194 |
| Occupational disease cases | 4 | 16,330 |

[13] Annual Report to the Governor for Calendar Year 1948, loc. cit.

TABLE XXIII

ARIZONA RURO EXPENSES, 1918[13]

Workmen's Compensation Insurance

| | No. of Claims | Value of Awards |
|---|---|---|
| General Class (private employments) | 1,687 | $5,124,479 |
| Self-Rater (private employers computing their own workmen's compensation rates and premiums) | Not given | 1,128,290 |
| Divies (political divisions) | Not given | 522,538 |
| Total | | $6,775,341 |

Accident Benefit Fund, 1918[14]

| | | |
|---|---|---|
| General Class | 21,045 | $1,491,055 |
| Divies | 1,760 | 139,238 |
| Total | 22,805 | $1,630,293 |
| Compensable death | 78 | $1,510,191 |
| Occupational disease cases | 1 | 16,390 |

[13] Annual Report to the Governor for Calendar Year 1918, loc. cit.

calendar year 1948 approximately ten times as much to dependents of workers killed on their jobs as New Mexico paid during the fiscal year 1947-48 to all injured workers.

Table XXIV gives a brief report of the income and expenditures of the Arizona State Insurance Fund. The significant fact to note here is that the Fund had a deficit of approximately $152,000 for 1948. This deficit has been analyzed for its causes by the actuaries employed by Arizona and recommendations for correction have been made which are worth consideration by those interested in the Arizona plan and wish to increase substantially the benefits of the New Mexico Act.

Earned premium for 1948 was $8,378,657. Current losses and loss reserve requirements were $6,920,636.[14] This represents a loss ratio of approximately eighty-three percent. The balance is not great enough to maintain the catastrophe reserve, the vocational rehabilitation fund and other expenses. Administrative costs of $798,589 must be included.[15] This represents approximately nine percent of expenses.

The causes for Arizona's difficulty are given in a report by their actuaries and will be discussed here. Four causes are given for the $152,000 deficit:

1) The fact that Arizona's Workmen's Compensation Act is liberal and has been liberally construed by courts;

2) The fact that payment for non-scheduled injuries is based

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[14] Annual Report, op. cit., Exhibits.

[15] Loc. cit.

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[14] Annual Report, op. cit., Exhibits.

[15] Loc. cit.

TABLE XXIV

REPORT OF INCOME AND EXPENDITURES FOR ARIZONA, 1948 [16]

| | | |
|---|---|---|
| Current Income | | $8,853,573.87 |
| Earned Premium | $8,378,656.91 | |
| Self-Insurance Tax | 7,460.84 | |
| Private Carriers Tax | 5,104.53 | |
| Interest Earnings | 462,114.70 | |
| Other Income | 236.89 | |
| Deduct: | | |
| Current losses and loss reserve requirements | | 6,920,635.58 |
| Apportionment of income to reserves | | 1,286,733.58 |
| Earned premium to catastrophe reserve | 942,355.72 | |
| Interest earnings to catastrophe reserve | 20,752.00 | |
| Loss reserve | 323,625.86 | |
| Administrative costs | | 798,588.61 |
| Total deductions | | $9,005,957.77 |
| Deficit | | $ 152,383.90 |

[16] Annual Report, loc. cit.

upon loss of earning power rather than a percentage of total disability;

3) The fact that general economic conditions have a marked effect upon disability claims;

4) The fact that certain types of awards are in excess of premiums received.[17]

In several court decisions under the Arizona law, if a causal connection between disability and the employment is established a claim must be allowed.[18]

For disabilities set forth in the statute, known as scheduled injuries, maximum permanent compensation of fity-five per cent of average monthly earnings prior to injury for a period not to exceed sixty months is allowed. If loss is less than one-hundred per cent permanent total, the worker receives compensation for the number of weeks which are proportionate to the percentage of disability.[19]

For non-scheduled injuries, the employee gets fifty-five per cent of his loss of earning power as has been noted. To establish this, actual wages after injury must be determined. The Commission has some responsibility for rehabilitating injured workers but cannot, as previously stated, control their mental attitude toward returning to work. The Commission has been unable to adopt a system of rating which would base non-scheduled earnings on previous wages. These non-scheduled

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17 J. J. O'Neill, Letter, op. cit., p. 1.

18 Smith v. Aluminum Co. of America, 155 p.(2d) 628., Phelps Dodge v. DeWitt, 162 P. (2d) 605, Goodyear Aircraft v. Industrial Commission of Arizona, 158 P.(2d) 511.

19 J. J. O'Neill, loc. cit.

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19 J. J. O'Neill, Inc. cit.

injuries are the greatest drain on the fund. These have no maximum time limit and partial disability may result in one hundred percent disability so far as performing the former job is concerned.[20] This means a worker with a non-scheduled injury may draw as much or more than a worker with a more serious scheduled injury.

The economic cycle influences the ability of injured workers to find re-employment. During a recession an injured worker may not find work. This reduction of demand for labor brings an increase in the number of claims filed for compensation and an increase in the duration of periods of compensation. For example, an injured worker compensated on the basis of fifty-five percent of his loss of earning power over an indefinite period may be drawing workmen's compensation because of a lack of demand for labor and not solely because of his injury. This the Arizona actuaries believe to be unjust to the state fund which presumably was not intended to be a welfare and unemployment relief agency.[21]

New Mexico, because of the low level of weekly payments and the definite statutory time periods noted earlier, does not appear to have been faced with any great increase in claims because of a poor demand for labor. However, the Superintendent of Insurance did state that if wages fell far enough an increase in workmen's compensation claimants might be seen. This he believed to have been true during the depression.[22]

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[20] Ibid., p. 3.

[21] Ibid., p. 5.

[22] R. F. Apodaca, Superintendent of Insurance, Interview, June 21, 1950.

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[22] E. F. Apodaca, Superintendent of Insurance, Interview, June 21, 1950.

Another factor which, according to the actuaries, drains the Arizona State Fund is the fact that the Arizona law does not make any provisions for deterioration to the human body and its inability to work because of age.[23] This makes possible an award to an elderly person which may be far above what that person could earn in normal times. Furthermore, an award given during the prime of working life could conceivably continue until an individual had passed the stage of greatest efficiency; yet no reduction of the award could be made. Again this makes the Fund a welfare agency contrary to its purpose, the actuaries believe.

The Arizona law permits exclusion of agricultural workers not using machinery, but exempted employers of agricultural workers may come under the Act by complying with the provisions. In 1948, 1,544 employers insured their agricultural workers. Many policy holders refused to extend coverage to all workers, extending it only to those in limited categories. In many instances the Commission has been presented with a claim by an injured agricultural worker, only to find the worker has been on the payroll only a short time prior to injury.[24] This has caused the fund to pay benefits when no premiums have been received for a certain classification and has resulted in leaving a loophole permitting an employer to report for premium purposes all individuals who have been injured. Compulsory coverage for industrial agriculture

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[23] J. J. O'Neill, loc. cit.

[24] Ibid., p. 6.

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[23] A. J. O'Neill, loc. cit.

[24] Ibid., p. 6.

has been recommended as a safeguard for the Commission.[25] In 1948, $832,000 was paid out on farm classifications and only $823,000 was collected.[26] This is a percentage of one hundred and one paid out on farm classifications. The overall loss ratio for the Arizona Fund was seen to be eighty-three percent. New Mexico insurance companies have a permissible loss ratio of only sixty percent. The remaining forty percent is for overhead expenses and these expenses are often reduced by state funds.

Under Arizona's Act Mexican nationals brought into the United States under treaty for domestic agricultural work must be granted workmen's compensation benefits. Under the international agreement it is mandatory that benefits be extended Mexicans, if benefits are offered demestic workers. Mexican nationals by treaty agreement must be covered by workmen's compensation insurance, but domestic workers in agriculture may be excluded.[27]

The actuaries for the Arizona State Insurance Fund have recommended the following changes in the Arizona law:[28]

1) Compulsory coverage for industrial agriculture should be enacted;

2) Any non-scheduled disability less than one-hundred percent permanent total should be defined as permanent partial, and computed on

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[25] Ibid., p. 7.

[26] Ibid., p. 8.

[27] Loc. cit.

[28] J. J. O'Neill, op. cit., pp. 8-10.

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a proportionate basis of what the actual degree of disability bears to the permanent total disability, which is now compensated at sixty-five percent of the average monthly wage earned prior to injury. For example, an injured employee who has been rated fifty percent for a non-scheduled disability would be paid on the basis of fifty percent of sixty-five percent of the average monthly wage he earned prior to his injury;

3) The Commission should be permitted to consider pre-existing physical disability in making any authorized deduction from the total disability found after a compensable disability;

4) The Arizona Workmen's Compensation Act should be amended so that a definite limitation shall be placed on death benefits instead of the method which is now being followed in computing such awards.

Assuming that the recommendations by the actuaries for statutory changes are followed and assuming that the basis for awards used in selected cases prior to April 1947 will be considered valid, Arizona could probably overcome the deficit in its fund. This is implied by the actuarial report. It has been noted that the awards prior to April 1947 ran considerably above comparable awards in New Mexico. The Arizona fund could probably pay these awards and remain solvent. The question arises: "What would New Mexico have to do in order to pay similar awards?"

Arizona, like New Mexico, has no general safety code, but the Commission maintains an accident prevention department to check on employers.[29] This department notifies employers of types of accidents

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and causes. It has the power to recommend rate increases for employers not observing recommendations of safety inspectors.

Table XXV compares rates for New Mexico and Arizona. Assuming substantially similar conditions of work, geographic and economic factors, and similar safety conditions to exist, one might conclude that costs in New Mexico would be substantially the same under a similar system. No other state in the nation is closer in background to New Mexico than is Arizona. Thus no better comparison is available.

The average New Mexico rate for the twelve categories listed in Table XXV is $3.31 per one hundred dollars of payroll. The average Arizona rate is $6.38 for the same or similar categories. It appears the Arizona employer pays approximately twice the premium of the New Mexico employer. For this premium the Arizona worker gets twice to ten and more times as much as the New Mexico worker in the awards examined. For dollar invested, it appears the Arizona injured worker is substantially better protected than is the New Mexico worker.

For New Mexico to approximate the Arizona awards without the addition of a state fund would probably necessitate a rate increase of over one hundred percent. If Arizona paid out eighty-three percent of its collected premiums and insurance companies pay out a maximum of sixty percent, insurance companies would have to collect at least $11,535,000 in premiums and this is approximately $3,000,000 more than Arizona's state fund collected for 1948. Arizona's fund collected approximately sevanty-three percent of what would presumably be needed as a bare minimum for insurance companies to cover liability under a

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TABLE NO. XXV

COMPARISON OF SELECTED RATES IN EFFECT PRIOR TO JULY 1, 1950 [30]

| Code No. | Type | N. Mex. Manual Rate (per $100 of payroll) | Arizona Manual Rate (per $100 of payroll) |
|---|---|---|---|
| 0006 | All farm work but in- and out-servants | 2.41 | 3.72* |
| 1165 | Mining N.O.C.--not coal--surface, no shafts | 3.58 | 5.74 |
| 1164 | Mining N.O.C.--not coal--with shafts, etc. | 4.10 | 10.12 |
| 5403 | Carpentry in dwelling construction not over three stories | 3.25 | 6.03 |
| 2586 | Cleaning or dyeing | .50 | Code 2583 - 1.24 |
| 2585 | Laundried N.O.C., carpet, rug or upholstery cleaning | .55 | 1.59 |
| 5183 | Plumbing N.O.C., gas, steam, etc. | 1.33 | 2.99 |
| 9079 | Restaurants | .56 | 1.12 |
| 2710 | Sawmills | 4.00 | 13.77 |
| 8008 | Stores, retail, wearing apparel | .27 | .37 |
| 5040 | Iron or steel, includes bridges, fire escapes | 11.70 | 20.13 |
| -- | Arizona Manual Rate for coal mines insured in state workmen's compensation fund. New Mexico has no rate. | | |
| -- | Coal mining | 7.46** | Code 1168 - 9.71 |

* Code 0006 includes inservants and outservants.

** One mine, Ferro.

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[30] Source for New Mexico rates: The Basic Manual of Rules, Classifications and Rates for Workmen's Compensation and Employers' Liability Insurance and Supplements (National Council on Compensation Insurance, New York, 1934); for Arizona rates: J. E. Gavin, Letter to author, June 30, 1950.

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COMPARISON OF SELECTED RATES IN EFFECT FROM 1[illegible] TO JULY 1, 1950 [20]

| Code No. | Type | New Jersey Rate (per hundred) | N. Am. Journal Rate (per hundred) |
|---|---|---|---|
| 0006 | All farm work but re- and over-servants | [illegible] | [illegible] |
| 1165 | Mining N.O.C.--not coal--surface, no shafts | [illegible] | [illegible] |
| 1161 | Mining N.O.C.--not coal--with shafts, etc. | [illegible] | [illegible] |
| 5105 | Carpentry in dwelling construction not over three stories | [illegible] | [illegible] |
| 2585 | Cleaning or dyeing | .30 | Code 2585 - [illegible] |
| 2585 | Laundries N.O.C.; carpet, rug or upholstery cleaning | .75 | [illegible] |
| 5183 | Plumbing N.O.C.; gas, steam, etc. | [illegible] | [illegible] |
| 9079 | Restaurants | .55 | [illegible] |
| 2713 | Sawmills | [illegible] | [illegible] |
| 8003 | Stores, retail, nearing equipment | .85 | [illegible] |
| 5040 | Iron or steel, including bridges, fire escapes | [illegible] | [illegible] |
| -- | Arizona Journal Rate for coal mines covered by state workmen's compensation fund. New Jersey has no rate. | | |
| -- | Coal mining | [illegible] | Code 1160 - [illegible] |

* Code 0006 includes inspectors and estimators.

** One mine, Ariz.

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[20] Source for New Jersey rates: The Manual Rating Bureau of New Jersey, Classifications and Rates for Workmen's Compensation and Employers' Liability Insurance and Supplements (Revised, revised to date, Jersey City, New York, 1954); for Arizona rates: J. E. Irvin, Director of Actuary, June 20, 1950.

system similar to Arizona's. As a rule of thumb a one-third increase in Arizona rates would presumably yield a premium substantial enough for private insurance companies to cover comparable liability.

To increase the average rates of Arizona one-third would create an average rate of $8.51. This would then be an increase of 257% over the average of New Mexico rates given in the table.

If one can assume this increase to be approximately correct, the cost to employers in workmen's compensation insurance would be considerably increased, especially for those engaged in dangerous occupations, as mining and structural steel work. However, the increase for a business with complete coverage for all employees might be borne with relative ease, depending upon the number of workers engaged in the more hazardous fields.

If New Mexico desired to increase benefits to approach those of Arizona, an adequate safety code with provisions for careful enforcement would be required. Unless the state were to write its own insurance, state industrial inspectors would have no weapon to use on employers who refused to abide by the safety code, if any such were found. Since safety is basic to low rate determination, this enactment might save employers sizeable sums under an increased benefit program.

In order to make the benefit program effective, compulsory insurance for all industrial employers would be needed to avoid the situation now facing Arizona in regard to industrial agriculture. Furthermore, to keep the program financially sound a maximum weekly compensation payment would probably be desirable. This should be high enough

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to afford an adequate standard of living as already described. Also, the maximum time period on total permanent benefits and death benefits would probably have to remain. This time period and this maximum amount should be in accord with the needs of the worker and his dependents and ought to be based upon the probable life span of a worker and dependents and the age of the worker at the time of injury.

If limits are imposed, there will be no guess work involved in the establishment of rates. This would give a sound system without the current difficulties in Arizona.

To assure workers that they are awarded the sums legally set forth, any one of a number of procedures might be more effective than the one now in operation. Many people propose an adequate commission system to assure uniformity and correctness. This might be desirable for New Mexico; however, court awards could presumably be standardized. The smallest awards in New Mexico appear to be among those cases never filed for court approval. Possibly assurance that all awards be filed for court approval or court action might increase the size of benefits received.

Now that a comparison of awards made and rates charged in Arizona and New Mexico has been attempted, an examination of the ideal Workmen's Compensation Act will follow. The New Mexico Act will be compared with this ideal.

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## CHAPTER XI

## THE NEW MEXICO WORKMEN'S COMPENSATION ACT COMPARED TO THE IDEAL ACT

From this comparison of the New Mexico Workmen's Compensation Act with the Arizona Act, it would appear wise to measure the New Mexico legislation in terms of the ideal workmen's compensation act as proposed by the Fifteenth and Sixteenth National Conferences on Labor Legislation. A general description of these Conferences and some of their history has been given earlier in Chapter I.

Table XXVI compares the New Mexico Act with the proposed ideal. Since this ideal proposal has been carefully constructed it is worthy of careful consideration by any one interested in labor legislation. New Mexico, as has been seen earlier, provides that the courts may permit insurance companies to pay medical bills of the injured in excess of seven hundred dollars. This appears to amount to unlimited medical benefits under the New Mexico Workmen's Compensation Act, as has been noted. It is only in this one respect that New Mexico approximates the ideal.

In terms of ideal legislation, the New Mexico Workmen's Compensation Act would need compulsory coverage of all industries except agriculture and domestic work. A change to a commission type of administration would be required. Coverage would need to be extended. Compensation periods and maximum and minimum allowances would need to be improved for the worker's protection. A second injury fund to care

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TABLE XXVI

NEW MEXICO WORKMEN'S COMPENSATION AS COMPARED WITH THE IDEAL[1]

| Item | Ideal | New Mexico |
|---|---|---|
| Compensation | Compulsory, elective for agriculture and domestic workers. | Not compulsory for any. |
| Administration | Commission | Court |
| Insurance | Exclusive state fund | Private insurance companies |
| Coverage | All industries and employees | Extra-hazardous industries |
| Injuries | Blanket occupational disease coverage | Selected diseases |
| Waiting period | 3 to 7 days. Retroactive after not more than 14 days. | First seven days excluded. |
| Medical service | Unlimited. | Unlimited. |
| Percentage | At least 2/3 of pay for non-fatal cases. 35% for widow, for widow only. 15% for each child, total not to exceed percentage for permanent total disability. | 60% of pay, minimum $12, maximum $25. 40% to widow, subject to maximum limit. 5% for each child to a limit of four. |
| Weekly maximum and minimum compensation | Above subsistence level. | $12 to $25 a week. |
| Compensation period | Fatal cases: Benefits to death or remarriage for widow. Two years compensation at least at remarriage. Children: to 18 years or longer if incapacitated. | Fatal: Widow maximum of $25 for 300 weeks. To children: 25% of earnings one child; 10% each additional child. Not over 60% of earnings or $25 for 300 weeks. |
| | Permanent fatal: life. | Permanent fatal: Maximum of $25 for |

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| Item | Ideal | New Mexico |
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| Compensation | Compulsory, elective for agriculture and domestic workers. | Not compulsory for any. |
| Administration | Commission | Courts |
| Insurance | Exclusive state fund | Private insurance companies |
| Coverage | All industries and employees | Extra-hazardous industries |
| Injuries | Blanket occupational disease coverage | Selected diseases |
| Waiting period | 3 to 7 days. Retroactive after not more than 14 days. | First seven days excluded. |
| Medical service | Unlimited. | Unlimited. |
| Percentage | At least 2/3 of pay for non-fatal cases. 75% for widow, for widow only. 15% for each child, total not to exceed percentage for permanent total disability. | 66⅔ of pay, minimum $12, maximum $25. 40% to widow, subject to maximum limit. 5% for each child to a limit of four. |
| Weekly maximum and minimum compensation | Above subsistence level. | $12 to $25 a week. |
| Compensation period | Fatal cases: Benefits to death or remarriage for widow. Two years compensation at least if remarriage. Children: to 18 years or longer if incapacitated. | Fatal: Widow maximum of $25 for 300 weeks. To children: 25% of earnings one child; 10% each additional child. Not over 60% of earnings or $25 for 300 weeks. |
| | Permanent: Lifetime. | Permanent total: Maximum of $25 for 550 weeks. |

TABLE XXVI, CONTINUED

| Item | Ideal | New Mexico |
|---|---|---|
| Compensation period, continued. | Temporary fatal: During disability. | Temporary fatal: Not defined. Probably maximum of $25 for period of disability if under 550 weeks. |
| | Permanent partial: Percentage of total disability. | Permanent partial: Extent of disability. |
| Second injuries | Employer charged as for first injury and balance out of special fund. | Employer charged for first injury. No further compensation. |
| Second injury fund | To be secured from unpaid draft benefits and first major injury cases. | Nothing. |
| Minors | Double compensation at least for those illegally employed. | Nothing. |
| Commutation | Payments in installments. Commutation of benefits approved only for good cause. | Lump sum possible. Court has authority on type of settlement. |
| Insurance coverage guarantee | Insolvency to be guarded against. Guarantee payments for injuries. | In special provisions in Workmen's Compensation Act. |
| Accident prevention | Compulsory reporting of disabling injuries including occupational disease. | Supposedly compulsory. |
| Procedure | Informal, before commission. | Supposedly informal, before court. |

[1] N.M. Stat. 1941, Sec. 57-901 ff.; Sixteenth National Convention on Labor Legislation (U.S. Department of Labor, Bureau of Labor Standards, Bulletin No. 117, Washington, D. C., 1949), pp. 22-23.

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for workers totally disabled by accidents occurring over a period of time would be required, Rigid accident prevention techniques and careful reports of accidents would be necessary additions to the current New Mexico procedure. Illegally employed minors should receive double compensation.

The two points set forth in the ideal legislation upon which most opposition in New Mexico would probably arise are: 1) the creation of a state workmen's compensation insurance fund and 2) the establishment of a commission for administration of the Workmen's Compensation Act. The value of a commission in the administration of workmen's compensation has already been examined in Chapter VIII. Therefore, attention will be centered upon the proposal for a state workmen's compensation insurance fund.

The Arizona state fund has been seen to be operating at a loss for the year 1948. It has been noted that with certain modifications this financial disadvantage may be overcome. However, for the purposes of discussion here it would be wiser to observe the operation of a solvent state fund. For this purpose the workmen's compensation insurance fund of the state of California was chosen.

The California state insurance fund has demonstrated that it is economical to insure with a state fund when the fund is properly operated, as can be seen in Table XXVII. This table illustrates the cost of three types of workmen's compensation insurance. The state fund, through low administrative cost, pays the largest dividend, and this of course is to the advantage of all policy holders.

for workers totally disabled by accidents occurring over a period of time would be required. Rigid accident prevention techniques and careful reports of accidents would be necessary additions to the current legal procedure. Obviously employers would prefer workmen's compensation.

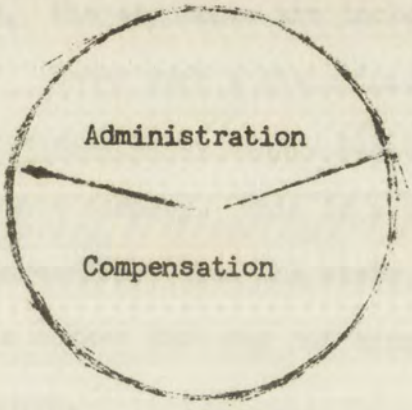
The two points set forth in the least legislation upon which most opposition in the Legislature would probably arise are: 1) the practice of a state workmen's compensation insurance fund and 2) the establishment of a commission for administration of the Workmen's Compensation Act. The value of a commission in the administration of workmen's compensation has already been examined in Chapter VIII. Therefore, attention will be centered upon the proposal for a state workmen's compensation insurance fund.

The Arizona state fund has been seen to be operating at a loss for the year 1942. It has been noted that with certain modifications this financial disadvantage may be overcome. However, for the purposes of discussion here it would be wiser to observe the operation of a solvent state fund. For this purpose the workmen's compensation insurance fund of the state of California was chosen.

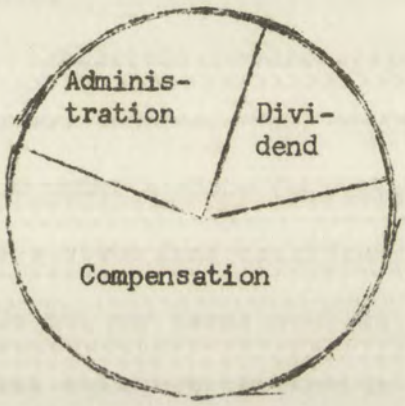
The California state insurance fund has demonstrated that it is economical to insure with a state fund when the fund is properly operated, as can be seen in Table XXVII. This table also shows the cost of three types of workmen's compensation insurance. The state fund, through low administrative costs, pays the lowest dividend, and this of course is to the advantage of all policy holders.

TABLE XXVII

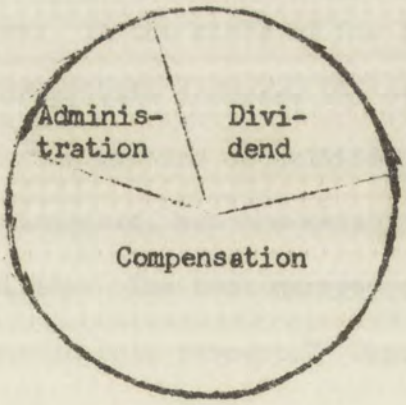
THE CALIFORNIA STATE INSURANCE FUND [2]




If you insure with a nonparticipating carrier, 59.4 percent of your premium dollar is for the payment of compensation benefits to injured employees and their dependents. All the rest will be absorbed in commissions to agents, overhead expenses, home office expenses (in many cases in other states or foreign countries) and dividends to stockholders.




If you insure with a participating insurer, 59.4 percent of your premium dollar is for the payment of compensation benefits. Whatever remains after the commissions to agents, administration charges, and overhead expenses have been taken out, becomes available for dividends; however, in the case of stock participating insurers, the dividend is shared with the stockholders.




If you insure with the State Compensation Insurance Fund, the same 59.4 percent of your premium dollar is for compensation benefits. The Fund does business directly with the employer and does not pay commissions to agents. The fund has no stockholders. Thus, its overhead is but little over one-half of the overhead of the participating carriers and about two-fifths of the overhead absorbed by the nonparticipators. With this much lower administration cost, there is a much larger remainder for dividends. This remainder plus all underwriting profit and all income from investments, is for policyholder dividends.

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[2] John B. Andrews, Progress of State Insurance Funds under Workmen's Compensation (United States Department of Labor Bulletin No. 30. Washington: U. S. Government Printing Office, 1939), p. 20.

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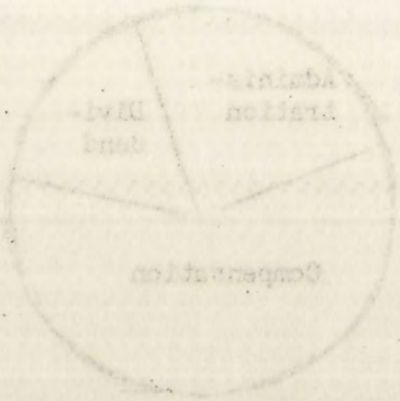
THE CALIFORNIA STATE INSUR NCE FUND [2]

If you insure with a proprietary [illegible] 59.4 percent of your premium dollar is for the payment of compensation benefits to injured employees and their dependents. All the rest will be absorbed in commissions to agents, overhead expenses, home office expenses (in many cases in other states or foreign countries) and dividends to stockholders.


If you insure with a participating insurer, 59.4 percent of your premium dollar is for the payment of compensation benefits. Whatever remains after the commissions to agents, administration charges, and overhead expenses have been taken out, becomes available for dividends; however, in the case of stock participating insurers, the dividend is shared with the stockholders.

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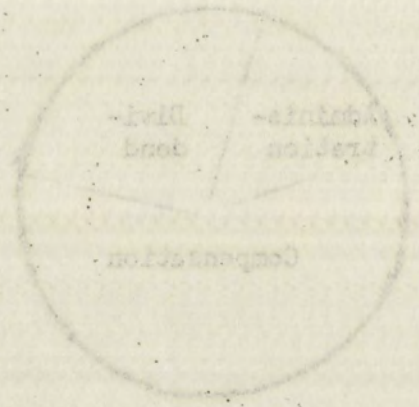


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Mr. John B. Andrews, author of Progress of State Insurance Funds under Workmen's Compensation, has made a strong case for state insurance funds. His arguments are included in the Appendix.

Under such a state insurance fund it is practically impossible for a worker to be denied his benefits through the insolvency of the insurance company. This is a tremendous asset, especially during years of depression. Also the state fund has a public trust and responsibility to the worker that may not appear on the part of all private insurance companies.

Criticisms leveled against state funds are found to be groundless by Mr. Andrews. Poor accident prevention, a common criticism, need not hold under a state fund program. In fact, an aggressive administration of a state fund could have the opposite effect. The fact that some funds do not pay taxes need not be a criticism in view of the fact that the money employers can save in premium costs far outweighs the lack of taxation. In the state of New York, however, the fund is taxed at the rates of private insurers and still operates economically.[3]

The problem of politics in the operation of state funds is not to be minimized, but the establishment of a merit system can reduce this possibility. The best managed state funds have been efficient and above reproach in this respect.[4] Opponents of state funds have criticized this system of insurance for not providing prompt payments. This has been

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found difficult to confirm or deny. For statistics on this point John B. Andrews has drawn from the records of the state of New York, which appears to have the best information available for this purpose. In New York the state fund has appeared to have followed the middle road. It has not paid as promptly as the best private insurance companies nor as slowly as the worst of the private companies.[5]

New Mexico would do well to examine the possibilities of establishing a state fund to write workmen's compensation insurance for all industries. This would make it possible to insure coal miners. Writing only one extremely hazardous business would probably mean disaster for the fund.

The future of state workmen's compensation insurance funds seems secure. They have proved their worth in many states, particularly in those states paying high benefits to injured workers. They can operate economically and can be an asset to both the the employer and the worker. The question may be raised, however, as to whether the present state of the economic and political development of New Mexico justifies experimentation with a state operated fund.

This chapter concludes the examination of the New Mexico Workmen's Compensation Act undertaken here. The following pages will be devoted to certain conclusions and recommendations which appear desirable for New Mexico.

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## CHAPTER XII

## CONCLUSIONS AND RECOMMENDATIONS

This thesis has attempted a survey of certain aspects of the New Mexico Workmen's Compensation Act , to show the sources of information and the information available and to attempt to appraise the Act at certain points.

There are several shortcomings in this discussion, many of them due to the scarcity of available information. This thesis shows, if nothing else, the need for reliable and systematic gathering of data with which to evaluate the actual functioning of the New Mexico Act. It also shows the need for a responsible, well staffed administration to check upon the effectivaness of the legislation and to recommend needed changes. Also, it points up the necessity of further independent research in this field.

Medical benefits, their amount, their method of payment, and the treatment involved is one problem needing study. Another is a detailed analysis of the effect of increased rates of payment and of compulsory insurance on business activity. A further area of study might be a detailed analysis of the cost of these increased benefits to New Mexico employers.

Recommendations for improvement in the New Mexico Act based upon material presented here are as follows: New Mexico needs better supervision of activity under the Workmen's Compensation Act. It would seem to be impossible to divide administrative authority more

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Recommendations for improvement in the New Mexico Act based upon material presented here are as follows: New Mexico needs better supervision of activity under the Workmen's Compensation Act. It would seem to be important to divide administrative authority more

inappropriately than existing legislation does. There is no centralized head to oversee the tasks to be performed under the Act. There is no check to see that reports are made promptly or at all. Furthermore, with current authority divided, it is nearly impossible for the Labor Commissioner to know what is being done by various other departments charged with health inspection, mining inspection and insurance inspection. Also, the Labor Commissioner, as well as these other departments, are charged with such a wide variety of tasks and given such limited budgets and staff with which to carry out their tasks that it is amazing anything significant is done.

New Mexico should set up an effecitve administration to see that necessary statistical information is reported on accidents, type of insurance, cost of insurance, awards, extent of coverage, and so forth. This would be the most significant forward step New Mexico could take and the first necessary step toward statutory improvement of the Workmen's Compensation Act.

Greater supervision of awards appears to be needed. New Mexico workers, as compared with Arizona workers, get considerably less of the premium dollar paid by the employer. With no rate increase, but merely more adequate supervison by either the courts or the Commissioner's office, the New Mexico worker might see a significant rise in his compensation payments.

To facilitate the worker's getting his legal compensation, an educational program directed by the Labor Commissioner and designed to inform all labor of the benefits to which they are entitled would

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be desirable. New Mexico does very poorly in this respect. The mere requirement that employers conspicuously post notices to the effect that they are covered by workmen's compensation insurance would aid in this campaign.

The coal mine problem requires extensive examination. Workers in such industries should not be forced into the condition of uncertainty surrounding labor prior to the enactment of workmen's compensation laws. The possibility of a state fund covering all risks should not be overlooked.

A safety code designed to set recognized goals for all industrial pursuits is needed to bring the Labor Commissioner and his staff out of the woods of fumbling uncertainty to a field of clear responsibility. Power to close unsafe establishments is desirable. The need for safe working conditions is generally realized and safety goals are frequently set. Current co-operation on improvement of safety in New Mexico seems high. This code should be largely an emergency tool to deal with a minority of unenlightened employers and would have definite educational value.

New Mexico would need an active safety department with full power to regulate and enforce a safety code if it attempted the award level achieved by Arizona and wished to maintain a sound financial basis for these awards. Also, reasonable maximum weekly payments and time limits would appear to be required. To overcome the uncertainty of economic conditions and the attitude of some workers to awards, partial disability should probably be defined as a percentage of total

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disability for the protection of the system. It appears that rates would have to be increased two to three times their present level to provide the funds needed for this program if private insurance companies are to write the insurance. The establishment of a state fund for writing workmen's compensation insurance and the placing of a commission in charge of awards might enable lower workmen's compensation insurance rates to be charged for similar awards than would be possible for private companies.

Little question exists on the meagerness of benefits. These need to be increased to permit a disabled worker or his surviving dependents to live adequately. One of the arguments for lump sum payments would be removed and the courts might be less willing to approve such awards if there were an increase in weekly benefits to meet current cost of living levels.

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# BIBLIOGRAPHY

## BOOKS

Dodd, Walter F., Administration of Workmen's Compensation. New York: The Commonwealth Fund, 1936.

Horovitz, Samuel B., Injury and Death under Workmen's Compensation Laws. Boston: Wright and Potter Printing Company, 1944.

Michelbacher, G. F., and T. M. Nial, Workmen's Compensation Insurance. New York: McGraw-Hill Company, Inc., 1925.

## PAMPHLETS AND PERIODICALS

Analysis of Provisions of Workmen's Compensation Laws and Discussion of Coverages, Supplemented. Insurance Department, Chamber of Commerce of the United States, Washington, D. C., 1948.

Andrews, J. B., Progress of State Insurance Funds under Workmen's Compensation. U. S. Department of Labor, Division of Labor Standards, Bulletin No. 30. Washington, D. C.: U. S. Government Printing Office, 1939.

Annual Report of the State Inspector of Mines. State of New Mexico, Inspector of Mines, Albuquerque, New Mexico, 1929-1949.

Annual Report to the Governor for 1948. The Industrial Commission of Arizona, Phoenix, Arizona, August, 1949.

The Basic Manual of Rules, Classifications and Rates for Workmen's Compensation and Employers' Liability Insurance and Supplement. National Council on Compensation Insurance, New York, N.Y., 1934.

Business Week, July 8, 1950.

Eighteenth Annual Report. New Mexico State Labor and Industrial Commission, Santa Fe, New Mexico, 1948.

Falk, I. S., et al, Disability among Gainfully Occupied Persons. Federal Security Agency, Social Security Board, Bureau of Research and Statistics, Bureau Memorandum No. 61. Washington, D. C.: U. S. Government Printing Office, 1945.

First Report of the International Labor Organization to the United Nations, Volume II. International Labor Organization, Geneva, Switzerland. Geneva: La Tribune de Geneve, 1947.

## BOOKS

Dodd, Walter F., Administration of Workmen's Compensation. New York: The Commonwealth Fund, 1936.

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The Basic Manual of Rules, Classifications and Rates for Workmen's Compensation and Employers' Liability Insurance and Supplement. National Council on Compensation Insurance, New York, N.Y., 1950.

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First Report of the International Labor Organization to the United Nations, Volume II. International Labor Organization, Geneva, Switzerland. Geneva: La Tribune de Geneve, 1947.

Historical Statistics of the United States, 1789-1945, Series G 144, 145. U. S. Bureau of the Census, Washington, D. C., 1949.

Horovitz, Samuel B., editor, N.A.C.C.A. Law Journal. National Association of Claimants' Compensation Attorneys, Boston, Massachusetts, Vol. 2, No. 1, November, 1948.

How Good Is Your Workmen's Compensation Law? U. S. Department of Labor, Division of Labor Standards, Bulletin No. 70. Washington, D. C.: U. S. Government Printing Office, 1944.

Industrial Injury Frequency Rates. U. S. Department of Labor, Division of Labor Standards, Special Bulletin No. 6. Washington, D. C.: U. S. Government Printing Office, 1945.

Insurance Policy Annotations. American Bar Association, Committee on Workmen's Compensation and Employers' Liability Insurance Law, Section of Insurance Law, 1949.

Jones, Ebenezer, editor, New Mexico Labor Laws. New Mexico State Labor and Industrial Commission, Santa Fe, New Mexico, 1949.

Kellogg, Lester S., and Dorothy S. Brady, "The City Worker's Family Budget," Monthly Labor Review, February, 1948.

Kossoris, Max B., Industrial Injury Statistics by States. U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 700. Washington, D. C.: U. S. Government Printing Office, 1942.

Mining Laws of New Mexico. State of New Mexico, Inspector of Mines, Albuquerque, New Mexico, 1946.

Mitchell, B. L., "New Wholesale Price Index," Monthly Labor Review, September, 1948.

Monthly Bulletin. Employment Security Commission of New Mexico, Albuquerque, New Mexico, October 1949 - April 1950.

Permanent and Total Disability Insurance. Report of the Senate Committee on Finance. Washington, D. C.: U. S. Government Printing Office, 1948.

"Prices and Cost of Living," Monthly Labor Review, January, 1947.

Resume of the Proceedings of the Fifteenth National Conference on Labor Legislation. U. S. Department of Labor, Bureau of Labor Standards, Bulletin No. 104. Washington, D. C.: U. S. Government Printing Office, 1948.

*Historical Statistics of the United States, 1789-1945*, Series D 126, 145. U. S. Bureau of the Census, Washington, D. C., 1949.

Horovitz, Samuel B., editor, *N.A.C.C. Law Journal*. National Association of Claimants' Compensation Attorneys, Boston, Massachusetts, Vol. 3, No. 4, November, 1949.

*New Good in Your Wonderful Compensation Law*. U. S. Department of Labor, Division of Labor Standards, Bulletin No. 70, Washington, D. C.: U. S. Government Printing Office, 1944.

*Industrial Injury Frequency Rates*. U. S. Department of Labor, Division of Labor Standards, Special Bulletin No. 6, Washington, D. C.: U. S. Government Printing Office, 1945.

*Insurance Policy Annotations*. American Bar Association, Committee on Workmen's Compensation and Employers' Liability Insurance Law, Section of Insurance Law, 1949.

Jones, Ephemer, editor, *New Mexico Labor Laws*. New Mexico State Labor and Industrial Commission, Santa Fe, New Mexico, 1949.

Kallock, Lester G., and Dorothy S. Brady, "The City Worker's Family Budget," *Monthly Labor Review*, February, 1948.

Rosecrie, Max B., *Industrial Injury Statistics by States*. U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 700, Washington, D. C.: U. S. Government Printing Office, 1942.

*Mining Laws of New Mexico*. State of New Mexico, Inspector of Mines, Albuquerque, New Mexico, 1946.

Mitchell, B. L., "New Wholesale Price Index," *Monthly Labor Review*, September, 1948.

*Monthly Bulletin*. Employment Security Commission of New Mexico, Albuquerque, New Mexico, October 1949 - April 1950.

*Permanent and Total Disability Insurance*. Report of the Senate Committee on Finance. Washington, D. C.: U. S. Government Printing Office, 1948.

"Prices and Cost of Living," *Monthly Labor Review*, January, 1947.

*Reports of the Proceedings of the Fifteenth National Conference on Labor Legislation*. U. S. Department of Labor, Bureau of Labor Standards, Bulletin No. 100. Washington, D. C.: U. S. Government Printing Office, 1951.

Resume of the Proceedings of the Sixteenth National Conference on Labor Legislation. U. S. Department of Labor, Bureau of Labor Standards, Bulletin No. 117. Washington, D. C.: U. S. Government Printing Office, 1948.

State Workmen's Compensation Laws. U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 921. Washington, D. C.: U. S. Government Printing Office, 1948.

Vane, R. J., and L. I. Dublin, Occupation Hazards and Diagnostic Signs. U. S. Department of Labor, Bureau of Labor Standards, Bulletin No. 41, Washington, D. C.: U. S. Government Printing Office, 1942.

Wollman, Nathaniel, An Appraisal of New Mexico Labor Legislation. University of New Mexico, Department of Government, Division of Research, Bulletin No. 24. Albuquerque: University of New Mexico Press, 1950.

Work Injuries in the United States during 1946. U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 921. Washington, D. C.: U. S. Government Printing Office, 1947.

Workmen's Compensation. U. S. Department of Labor, Division of Labor Standards, Bulletin No. 56. Washington, D. C.: U. S. Government Printing Office, 1943.

## LEGAL STATUTES

Arizona Code, 1939, Annotated and Supplemented. Indianapolis, Indiana: Bobbs-Merrill Company, 1940.

New Mexico Statutes, 1941, Annotated and Supplemented. Indianapolis, Indiana: Bobbs-Merrill Company, 1942.

*Proceedings of the Proceedings of the Sixteenth National Conference on Labor Legislation.* U. S. Department of Labor, Bureau of Labor Standards, Bulletin No. 117. Washington, D. C.: U. S. Government Printing Office, 1952.

*State Workmen's Compensation Laws.* U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 121. Washington, D.C.: U.S. Government Printing Office, 1952.

Vane, R. V., and L. T. Dublin, *Compilation Hazards and Disappearing Signs.* U. S. Department of Labor, Bureau of Labor Standards, Bulletin No. 41. Washington, D. C.: U. S. Government Printing Office, 1942.

Wollman, Nathaniel, *An Appraisal of New Mexico Labor Legislation.* University of New Mexico, Department of Government, Division of Research, Bulletin No. 2. Albuquerque: University of New Mexico Press, 1950.

*Work Injuries in the United States during 1946.* U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 921. Washington, D. C.: U. S. Government Printing Office, 1947.

*Workmen's Compensation.* U. S. Department of Labor, Division of Labor Standards, Bulletin No. 56. Washington, D. C.: U. S. Government Printing Office, 1943.

## LEGAL STATUTES

*Arizona Code, 1939, Annotated and Supplemented.* Indianapolis, Indiana: Bobbs-Merrill Company, 1940.

*New Mexico Statutes, 1941, Annotated and Supplemented.* Indianapolis, Indiana: Bobbs-Merrill Company, 1942.

# OTHER SOURCES

## LETTERS

Arledge, R. F. Deacon, Judge, Second Judicial District, to John A. Garcia, State Inspector of Mines, April 7, 1948.

Arledge, R. F. Deacon, to J. A. Garcia, April 14, 1948.

Baca, A. B., Operator Carthage Mine, to the author, June 16, 1950.

Carmody, D. W., District Judge, to District Attorney M. P. Gutierrez, April 6, 1948.

Denkscherz, J. A., Secretary, National Council on Compensation Insurance, to author, April 26, 1950.

Garcia, J. A., State Inspector of Mines, to Judge David Carmody, April 2, 1948.

Garcia, J. A., to Representative Sixty Leyva, January 26, 1949.

Garcia, J. A., to Judge R. F. Deacon Arledge, April 2, 1948.

Gavin, J. E., Secretary, Industrial Commission of Arizona, to author, June 30, 1950.

McDonald, E. J., Secretary-Treasurer, New Mexico State Federation of Labor, to author, June 14, 1950.

O'Neill, J. J., Chairman, Arizona State Industrial Commission, to Hon. Fred J. Fritz, Arizona State Legislature, November 2, 1949.

O'Neill, J. J., to author, June 27, 1950.

Ward, R. W., Assistant Attorney General, to Judge R. F. Deacon Arledge, April 8, 1948.

## INTERVIEWS

Albuquerque Lumber Co., June 23, 1950.

Apodaca, R. F., Superintendent of Insurance, June 21, 1950.

Arledge, R. F. Deacon, Judge, June 14, 1950.

Beal, Mr., Compensation Clerk, Victor Agency, June 20, 1950.

Clark, R. E., Assistant Professor of Law, University of New Mexico, June 9, 1950.

## LETTERS

Arledge, R. F. Dawson, Judge, Second Judicial District, to John A. Garcia, State Inspector of Mines, April 7, 1949.

Arledge, R. F. Dawson, to J. A. Garcia, April 14, 1949.

Beers, W. G., Operator Cottonwood Mine, to the SENATOR, June 16, 1950.

Carmody, W. H., District Judge, to District Attorney M. E. Gallegos, April 6, 1949.

Lenkeburg, G. A., Secretary, National Council on Compensation Insurance, to author, April 26, 1950.

Garcia, V. A., State Inspector of Mines, to Judge Lewis Dempsey, April 2, 1949.

Garcia, J. A., to Representative Bruce Loya, January 26, 1949.

Garcia, J. A., to Judge R. F. Dawson Arledge, April 2, 1949.

Gurin, J. S., Secretary, Industrial Commission of Arizona, to author, June 30, 1950.

Lobosco, E. J., Secretary-Treasurer, New Mexico State Federation of Labor, to author, June 14, 1950.

O'Neill, J. J., Chairman, Arizona State Industrial Commission, to Hon. Fred G. Irvin, Arizona State Congressmen, November 2, 1949.

O'Neill, J. J., to author, June 27, 1950.

Ward, R. T., Assistant Attorney General, to Judge R. F. Dawson Arledge, April 8, 1949.

## INTERVIEWS

Albuquerque Lumber Co., June 30, 1950.

Apodaca, R. F., Superintendent of Insurance, June 21, 1950.

Arledge, R. F. Dawson, Judge, June 1, 1950.

Beal, Mr., Compensation Claim, Utah Copper, June 30, 1950.

Clara, R. R., Assistant Professor of Law, University of New Mexico, June 9, 1950.

Cook, Mrs., Compensation Clerk, Lovelace Clinic, June 19, 1950.

Fred Mackey's, Men's Retail Clothing, June 27, 1950.

Gear, Mr., Accountant, Springer Transfer Co., June 22, 1950.

J. C. Penney Co., June 23, 1950.

Joiner, A. E., New Mexico Labor Commissioner, February 24, 1950.

Jones, E., New Mexico Assistant Labor Commissioner, June 21, 1950.

Markus, Retail Clothing Store, June 29, 1950.

McDowell, John, Assistant Business Manager, Plumbers' and Steamfitters Local 412, June 8, 1950.

Messersmith, Velda, Assistant Personnel Director, J. C. Penney Co., June 22, 1950.

Mountain States Mutual Casualty Co., March 13, 1950.

Pettie, T., Claims Adjustor, Hartford Accident and Indemnity Co., June 19, 1950.

Pioneer Mutual Compensation Co., June 20, 1950.

Rutherford Construction Co., June 26, 1950.

Sanitary Laundry, June 26, 1950.

Seligman & Sackett, Insurance, June 19, 1950.

Springer Transfer Co., June 23, 1950.

Trossello, M. P., Ferro Mine Operator, June 16, 1950.

LEGAL CASES

Aranbula v. Banner Mining Co., 49 N.M. 253 (1945)

Barton v. Skelly Oil Co., 47 N.M. 127 (1943)

Elsea v. Broome Furniture Co., 47 N.M. 356 (1943)

Gatliff Coal Co. v. Hills Administrator, 92 S.W. 2d 56 (1936)

Gonzales v. Chino Copper Co., 29 N.M. 228 (1924)

Cook, Mrs., Compensation Clerk, Lovelace Clinic, June 29, 1950.

Fred Lackey's, Men's Retail Clothing, June 27, 1950.

Geer, Mr., Accountant, Springer Transfer Co., June 22, 1950.

J. C. Penney Co., June 23, 1950.

Joiner, A. E., New Mexico Labor Commissioner, February 24, 1950.

Jones, E., New Mexico Assistant Labor Commissioner, June 21, 1950.

Karnes, Retail Clothing Store, June 29, 1950.

McDowell, John, Assistant Business Manager, Plumbers' and Steamfitters Local 412, June 8, 1950.

Nesenmith, Velda, Assistant Personnel Director, J. C. Penney Co., June 22, 1950.

Mountain States Mutual Casualty Co., March 13, 1950.

Pettis, T., Claims Adjuster, Hartford Accident and Indemnity Co., June 19, 1950.

Pioneer Mutual Compensation Co., June 20, 1950.

Rutherford Construction Co., June 26, 1950.

Sanitary Laundry, June 26, 1950.

Seligman & Sackett, Insurance, June 19, 1950.

Springer Transfer Co., June 22, 1950.

Trosello, M. P., Ferro Mine Operator, June 16, 1950.

LEGAL CASES

Arambula v. Banner Mining Co., 49 N.M. 253 (1945)

Barton v. Shelly Oil Co., 47 N.M. 127 (1943)

Tilsa v. Dreona Furniture Co., 47 N.M. 355 (1943)

Gallup Coal Co. v. Mills Administrator, 92 S.W. 24 55 (1936)

Gunkelen v. Chino Copper Co., 29 N.M. 229 (1924)

Gonzales v. Pecos Valley Packing Co., 48 N.M. 185 (1944)

Janney v. Fullroe, 47 N.M. 423 (1943)

Jones v. Brink, 39 S. 2d 791 (1949)

Jones v. George F. Getty Oil Co., 92 F. 2d 255 (1937)

Mathews v. New Mexico Light and Power Co., 46 N.M. 118 (1942)

Olguin v. Thygesen, 47 N.M. 377 (1943)

Pino v. Ozark Smelting Co., 35 N.M. 87 (1930)

Roberts v. Frank's Inc., 49 N.E. 2d 427 (1943)

Southwestern Portland Cement Co. v. Simpson, 135 F. 2d 584 (1943)

Stevenson v. Lee Moor Contracting Co., 45 N.M. 354 (1941)

Union Oil Co. of California v. Hunt, 111 F. 2d 269 (1940)

Webb v. New Mexico Publishing Co., 47 N.M. 279 (1943)

Anderson v. Contract Trucking Co., 48 N. M. 158 (1944).

Flippo v. Martin, 52 N. M. 402 (1948)

Gabaldon v. Gabaldon, 38 N. M. 392 (1934)

Goodyear Aircraft v. Industrial Commission of Arizona, 158 P. (2d) 511

Hoffman v. Brophy, 149 P. (2d) 160

Holloman v. Leib, 17 N. M. 270 (1912)

Jones v. International Minerals and Chemical Corp., 202 P. (2d) 837

Kennecott Copper Co. v. Industrial Commission of Arizona, 158 P. (2d) 837

McKinney v. Dorlac, 48 N. M. 149 (1944)

Moruzzi v. Federal Life and Casualty Co., 42 N. M. 35 (1938)

Phelps Dodge v. DeWitt, 162 P. (2d) 605

Sallee v. Calhoun, 46 N. M. 468 (1942)

Smith v. Aluminum Company of America, 155 P. (2d) 628

Thwaits v. Kennecott Copper Co., 52 N. M. 107 (1948)

Gonzales v. Pecos Valley Packing Co., 42 N.M. 385 (1944)

Janney v. Fullerton, 47 N.M. 423 (1943)

Jones v. Brink, 39 S. 2d 791 (1949)

Jones v. Gaines T. Daily Oil Co., 32 P. 24 253 (1937)

---

Mathews v. New Mexico Light and Power Co., 46 N.M. 118 (1942)

Olivas v. Thyssen, 47 N.M. 377 (1943)

Pino v. Ozark Smelting Co., 35 N.M. 67 (1930)

Roberts v. Frank's Inc., 49 N.M. 34 427 (1943)

Southwestern Portland Cement Co. v. Simpson, 135 P. 24 384 (1943)

Stevenson v. Lee Moor Contracting Co., 45 N.M. 354 (1941)

Union Oil Co. of California v. Hunt, 111 P. 24 269 (1940)

Lobb v. New Mexico Publishing Co., 47 N.M. 277 (1943)

Anderson v. Continent Trucking Co., 48 N. M. 158 (1944).

Fitzpo v. Martin, 52 N. M. 402 (1948)

Gabaldon v. Gabaldon, 38 N. M. 392 (1934)

Goodyear Aircraft v. Industrial Commission of Arizona, 158 P. (24) 511

Hoffman v. Proctor, 149 P. (24) 160

Rollomo v. Lyle, 12 N. M. 270 (1912)

Jones v. International Minerals and Chemical Corp., 202 P. (24) 237

Keystone Copper Co. v. Industrial Commission of Arizona, 158 P. (24) 837

Hallmark v. Torlano, 48 N. M. 149 (1944)

Morris v. Federal Life and Casualty Co., 42 N. M. 5 (1938)

Phelps Dodge v. Pelkie, 162 P. (24) 605

Salles v. Gallegos, 44 N. M. 440 (1940)

Smith v. Alumbaugh Company of Arizona, 155 P. (24) 458

Thomas v. Hancock Copper Co., 52 N. M. 207 (1946)

# APPENDICES

## APPENDIX A

## CONVENTION CONCERNING LABOUR INSPECTION IN INDUSTRY AND COMMERCE(*)

The General Conference of the International Labour Organization, adopts this eleventh day of July of the year one thousand nine hundred and forty seven the following Convention, which may be cited as the Labour Inspection Convention, 1947:

### PART I. LABOUR INSPECTION IN INDUSTRY

#### Article 1

Each Member of the International Labour Organization for which this Convention is in force shall maintain a system of labour inspection in industrial workplaces.

#### Article 2

1. The system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

2. National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention.

#### Article 3

1. The functions of the system of labour inspection shall be:
   (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
   (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
   (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

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(*) This has not been acted upon by the United States, but was submitted to Congress in House Document 51, 81st Congress, 1st Session, February 2, 1949.

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2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Article 4

1. So far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority.

2. In the case of a federal State, the term "central authority" may mean either a federal authority or a central authority of a federated unit.

Article 5

The competent authority shall make appropriate arrangements to promote:

(a) effective cooperation between the inspection services and other government services and public or private institutions engaged in similar activities; and
(b) collaboration between officials of the labour inspectorate and employers and workers or their organizations.

Article 6

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

Article 7

1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties.

2. The means of ascertaining such qualifications shall be determined by the competent authority.

3. Labour inspectors shall be adequately trained for the performance of their duties.

Article 8

Both men and women shall be eligible for appointment to the inspection staff; where necessary, special duties may be assigned to men and women inspectors.

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Article 9

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.

Article 10

The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for:

(a) the importance of the duties which inspectors have to perform, in particular -
  (i) the number, nature, size and situation of the workplaces liable to inspection;
  (ii) the number and classes of workers employed in such workplaces; and
  (iii) the number and complexity of the legal provisions to be enforced;
(b) the material means placed at the disposal of the inspectors; and
(c) the practical conditions under which visits of inspection must be carried out in order to be effective.

Article 11

1. The competent authority shall make the necessary arrangements to furnish labour inspectors with -
  (a) local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned;
  (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties.

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:

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Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.

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## Article 12

1. Labour inspectors provided with proper credentials shall be empowered:

(a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
(b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and
(c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular -
  (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;

  (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;
  (iii) to enforce the posting of notices required by the legal provisions;
  (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

2. On the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

Article 13

1. Labour inspectors shall be empowered to take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers.

2. In order to enable inspectors to take such steps they shall be empowered, subject to any right of appear to a judicial or administrative authority which may be provided by law, to make or to have made orders requiring -
(a) such alterations to the installation or plant, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to the health or safety of the workers; or
(b) measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

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(b) measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

3. Where the procedure prescribed in paragraph 2 is not compatible with the administrative or judicial practice of the Member, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force.

Article 14

The labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.

Article 15

Subject to such exceptions as may be made by national laws or regulations, labour inspectors -

(a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;
(b) shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties; and
(c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

Article 16

Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Article 17

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning; Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Article 18

Adequate penalties for violations of the legal provisions

3. Where the procedure prescribed in paragraph 2 is not compatible with the administrative or judicial practice of the Member, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force.

Article 14

The Labour Inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.

Article 15

Subject to such exceptions as may be made by national laws or regulations, labour inspectors -

(a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;

(b) shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties; and

(c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

Article 16

Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Article 17

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning; Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Article 18

Adequate penalties for violations of the legal provisions

enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

Article 19

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities.

2. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year.

Article 20

1. The central inspection authority shall publish an annual general report on the work of the inspection services under its control.

2. Such annual reports shall be published within a reasonable time after the end of the year to which they relate and in any case within twelve months.

3. Copies of the annual reports shall be transmitted to the Director-General of the International Labour Office within a reasonable period after their publication and in any case within three months.

Article 21

The annual report published by the central inspection authority shall deal with the following and other relevant subjects in so far as they are under the control of the said authority:

(a) laws and regulations relevant to the work of the inspection service;
(b) staff of the labour inspection service;
(c) statistics of workplaces liable to inspection and the number of workers employed therein;
(d) statistics of inspection visits;
(e) statistics of violations and penalties imposed;
(f) statistics of industrial accidents;
(g) statistics of occupational diseases.

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(f) statistics of industrial accidents;
(g) statistics of occupational diseases.

## APPENDIX B

## RECOMMENDATION CONCERNING LABOUR INSPECTION

The General Conference of the International Labour Organization, adopts this eleventh day of July of the year one thousand nine hundred and forty-seven the following recommendation, which may be cited as the Labour Inspection Recommendation, 1947:

Whereas the Labour Inspection Recommendation, 1923, and the Labour Inspection Convention, 1947, provide for organization of systems of labour inspection and it is desirable to supplement the provisions thereof by further recommendations;

The Conference recommends that each Member should apply the following provisions as rapidly as national conditions allow and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto.

### I. PREVENTIVE DUTIES OF LABOUR INSPECTORATES

1. Any person who proposes to open an industrial or commercial establishment, or to take over such an establishment, or to commence in such an establishment the carrying on of a class of activity specified by a competent authority as materially affecting the application of legal provisions enforceable by labour inspectors, should be required to give notice in advance to the competent labour inspectorate either directly or through another designated authority.

2. Members should make arrangements under which plans for new establishments, plant, or processes of production may be submitted to the appropriate labour inspection service for an opinion as to whether the said plans would render difficult or impossible compliance with the laws and regulations concerning industrial health and safety or would be likely to constitute a threat to the health or safety of the workers.

3. Subject to any right of appeal which may be provided by law, the execution of plans for new establishments, plant and processes of production deemed under national laws or regulations to be dangerous or unhealthy should be conditional upon the carrying out of any alterations ordered by the inspectorate for the purpose of securing the health and safety of the workers.

### II. COLLABORATION OF EMPLOYERS AND WORKERS IN REGARD TO HEALTH AND SAFETY

4. (1) Arrangements for collaboration between employers and workers for the purpose of improving conditions affecting the health

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2. Members should make arrangements under which plans for new establishments, plant, or processes of production may be submitted to the appropriate labour inspection service for an opinion as to whether the said plans would render difficult or impossible compliance with the laws and regulations concerning industrial health and safety or would be likely to constitute a threat to the health or safety of the workers.

3. Subject to any right of appeal which may be provided by law, the execution of plans for new establishments, plant and processes of production deemed under national laws or regulations to be dangerous or unhealthy should be conditional upon the carrying out of any alterations ordered by the inspectorate for the purpose of securing the health and safety of the workers.

### II. COLLABORATION OF EMPLOYERS AND WORKERS IN ENSURING TO HEALTH AND SAFETY

4. (1) Arrangements for collaboration between employers and workers for the purpose of improving conditions affecting the health

and safety of the workers should be encouraged.

(2) Such arrangements might take the form of safety committees or similar bodies set up within each undertaking or establishment and including representatives of the employers and the workers.

5. Representatives of the workers and the management, and more particularly members of works safety committees or similar bodies where such exist, should be authorized to collaborate directly with officials of the labour inspectorate, in a manner and within limits fixed by the competent authority, when investigations and, in particular, enquiries into industrial accidents or occupational diseases are carried out.

6. The promotion of collaboration between officials of the labour inspectorate and organizations of employers and workers should be facilitated by the organization of conferences or joint committees, or similar bodies, in which representatives of the labour inspectorate discuss with representatives of organizations of employers and workers questions concerning the enforcement of labour legislation and the health and safety of the workers.

7. Appropriate steps should be taken to ensure that employers and workers are given advice and instruction in labour legislation and questions of industrial hygiene and safety by such measures as:

(a) lectures, radio talks, posters, pamphlets and films explaining the provisions of labour legislation and suggesting methods for their application and measures for preventing industrial accidents and occupational diseases;
(b) health and safety exhibitions; and
(c) instruction in industrial hygiene and safety in technical schools.

# APPENDIX C

## REPORT OF ORAL QUESTIONNAIRES

Type of Business: Construction Company (Six Employees)

| Questions | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M |
| 2) Job Classification | Carpenter | Carpenter | Apprentice Carpenter | Carpenter | Carpenter | Carpenter |
| 3) Length of Employ. with Firm | 5 yrs | 6 mos | 2 mos | 15 mos | 3 yrs | 1 week |
| 4) Union member | Yes | Yes | Yes | Yes | Yes | Yes |
| 5) Ever injured needing a doctor? | Yes | No | No | No | Yes | No |
| 6) Who would or did pay bill? | Workmen's compensation | Insurance company | Don't know | Insurance company | Insurance | Workmen's compensation |
| 7) Would any money be expected if off work for 8 days or more? | Yes, if off over 7 days | Yes | Yes | Yes | No | Yes |
| 8) If so, why expected? | W.C. Act | Insurance is carried | Don't know | W.C. Act | Don't expect it | Workmen's compensation |
| 9) Ever heard of a workmen's compensation act? | Yes | Yes | Don't remember | Yes | Yes | Yes |
| 10) If so, where told or by whom? | Don't remember | Friends | Don't remember | Don't remember | Don't know | Union leader in New York |
| 11) What will it do for a worker? | Starve him; it pays too little | Don't remember | Don't remember | Protects worker | Don't know | Don't remember |

APPENDIX C

REPORT OF ORAL QUESTIONNAIRES

Type of Business: Construction Company (Six Employees)

| Questions | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M |
| 2) Job Classification | Carpenter | Carpenter | Carpenter | Apprentice Carpenter | Carpenter | Carpenter |
| 3) Length of Employ. with Firm | 5 yrs | 6 mos | 2 mos | 14 mos | 3 yrs | 1 week |
| 4) Union member | Yes | Yes | Yes | Yes | Yes | Yes |
| 5) Ever injured needing a doctor? | Yes | No | No | No | Yes | No |
| 6) Who would or did pay bill? | Workman's compensation | Insurance company | Don't know | Insurance company | Insurance | Workmen's compensation |
| 7) Would any money be expected if off work for 8 days or more? | Yes, if off over 7 days | Yes | Yes | Yes | No | Yes |
| 8) If so, why expected? | W.C. act | Insurance is carried | Don't know | W.C. act | Don't expect it | Workmen's compensation |
| 9) Ever heard of a workmen's compensation act? | Yes | Yes | Don't remember | Yes | Yes | Yes |
| 10) If no, where told for by whom? | Don't remember | Friends | Don't remember | Don't remember | Don't know | Union leader in New York |
| 11) What will it do for a worker? | Give him: it pays too little | Don't remember | Don't remember | Protects worker | Don't know | Don't remember |

# APPENDIX C

## REPORT OF ORAL QUESTIONNAIRES

Type of Business: Construction Company (6 employees)

| Questions | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M |
| 2) Job Classification | Carpenter | Carpenter | Laborer | Laborer | Laborer | Trudk Driver |
| 3) Length of Employment with Firm | 1 week | 6 years | 7 months | 3 years | 2 weeks | 3 years |
| 4) Union member | Yes | Yes | Yes | Yes | Yes | Yes |
| 5) Ever injured needing a doctor? | Yes | No | No | Yes | No | No |
| 6) Who would or did pay bill? | I did | Company | Ins. Co. | Ins. Co. | Don't know | workmen's comp. probably |
| 7) Would any money be expected if off work for 8 days or more? | A man is supposed to get some | Yes | Yes | Yes | No | Yes |
| 8) If so, why expected? | workmen's compensation | Don't remember | Don't know | Ins. Co. has to pay | Not expected | workmen's compensation |
| 9) Ever heard of a workmen's compensation act? | Yes | Yes | No | Don't remember | No | Yes |
| 10) If so, where told or by whom? | Don't remember | Don't remember | Never told | Don't know | Never told | Told while working in coal mines in Silver City |
| 11) What will it do for a worker? | Pays comp. for 300 wks | Don't know | Don't know | Don't know | Don't know | Pays weekly compensation |

APPENDIX

REPORT OF CASE QUESTIONNAIRES

Type of Business: Construction Company (6 employees)

| Questions | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M |
| 2) Job Classification | Carpenter | Carpenter | Laborer | Laborer | Laborer | Truck Driver |
| 3) Length of employment with firm | 1 week | 4 years | 7 months | 3 years | 2 weeks | 2 years |
| 4) Union member | Yes | Yes | Yes | Yes | Yes | Yes |
| 5) Ever injured needing a doctor? | Yes | No | No | Yes | No | No |
| 6) Who would or did pay bill? | I did | Company | Ins. Co. | Ins. Co. | Don't know | Workmen's comp. pub. ctr |
| 7) Would any money be deducted if off work for 8 days or more? | A man is supposed to. | Yes | Yes | Yes | No | Yes |
| 8) If so, why supposed? | Workmen's compensation member | Don't know. | Don't know | Ins. Co. but it pay | Not employed | Workmen's compensation |
| 9) Ever heard of a workmen's compensation act? | Yes | Yes | No | Don't remember | No | Yes |
| 10) If so, where told or by whom? | Don't remember | Don't remember | Never told | Don't know | Never told in coal mines in Silver City | Told while working |
| 11) What will it do for a worker? | Pays comp. For 300 wks. | Don't know | Don't know | | | Pays weekly compensation |

# APPENDIX C

## REPORT OF ORAL QUESTIONNAIRES

Type of Business: Local Concrete Manufacturer and Hauling Company (10 employees)

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M | M | M | M | M |
| 2) Job Classification | Laborer | Laborer | Truck Driver | Truck Driver | Hlpr | Laborer | Truck Driver | Hlpr | Truck Driver | Hlpr |
| 3) Length of Employment with firm | 6 yrs | 5 wks | 2 mos | 3 yrs | 3 wks | 1 mo | 4 yrs | 2 wks | 10 mos | 2 mos |
| 4) Union member | No | No | No | No | No | No | No | No | No | No |
| 5) Ever injured needing a doctor? | Yes | No | No | No | No | No | Yes | No | No | No |
| 6) Who would or did pay bill? | Company | Don't know | Co. probly | Pers. Ins. | Don't know | I'd pay | Ins. Co. | Company | Company | Personal insurance |
| 7) Would any money be expected if off work for 8 days or more? | * Yes | * Don't know | No | Pers. Ins. | No | No | Yes | Don't know | No | Don't know |
| 8) If so, why expected? | Ins. Co. must pay | No Reply | No Reply | No Reply | No Reply | No Reply | No Reply | No Reply | No Reply | No Reply |
| 9) Ever heard of a workmen's compensation act? | Not sure | No | Yes | No | Maybe | Don't know | Yes | No | No | Yes |
| 10) If so, where told and by whom? | No Reply | No reply | Don't remember | No reply | No reply | No reply | Don't remember | No reply | No reply | Friends |
| 11) What will it do for a worker? | No reply | No reply | Don't know | No reply | No reply | No reply | Pays lost time & med. bills | No reply | No reply | Money for sickness |

APPENDIX C

REPORT OF OWN QUESTIONNAIRES

Type of Business: Local Concrete Manufacturer and Building Company (10 employees)

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M | M | M | M | M |
| 2) Job Classification | Lab-orer | Truck Driver | Truck Driver | Hlpr | Lab-orer | Truck Driver | Hlpr | Truck Driver | Hlpr | |
| 3) Length of Employment with firm | 6 mos | 5 wks | 2 mos | 3 yrs | 3 wks | 1 mo | 4 yrs | 12 wks | 10 mos | 2 mos |
| 4) Union member | No | No | No | No | No | No | No | No | No | No |
| 5) Ever injured needing a doctor | Yes | No | No | No | No | No | Yes | No | No | No |
| 6) Who would or did pay bill? | Com-pany | Don't know | Don't know, probably Ins. | Ins. | Don't know | Don't know | Ins. | Com-pany | Personal or Com-pany | |
| 7) Would any money be paid to you off work for 2 days or more? | Yes | Don't know | Ins. Co. | Ins. | Don't know | No | No | No | Don't know | Don't know |
| 8) If no, why expected? | | No | No | No | No | No | No | No | No | No |
| 9) Ever heard of a workman's compensation act? | Not sure | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know |
| 10) If no, where told and by whom? | No | No | No | No | No | No | No | No | No | Yes |
| | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Friends |
| 11) What will it do for a workers? | Reply: Don't know | No | Reply: Don't know | No | No | No | No | No | No | Money for sickness |
| | | Reply: Don't know | | Reply: Don't know | Reply: Don't know | Reply: Don't know | Reply: Time & Ins. | Reply: Don't know | Reply: Don't know | |

# APPENDIX C

## REPORT OF ORAL QUESTIONNAIRES

Type of Business: Contractor Engaged in Residence and Commercial Construction

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M | M | M | M | M |
| 2) Job Classification | Laborer | Apprtc Carptr | Carpenter | Carpenter | Carpenter | Carpenter | Foreman | Carp | Laborer | Laborer |
| 3) Length of Employment with Firm | 2½ yrs | 3½ yrs | 4½ yrs | 3 yrs | 2½ yrs | ½ yr | 5 yrs | 2 yrs | 2 mos | 2½ mos |
| 4) Union Member | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 5) Ever injured needing a doctor? | No | No | Yes | No | No | No | No | No | No | No |
| 6) Who would or did pay bill? | Don't know | Ins. Co. | Ins. Co. | Comp. Ins. | Ins. Co. | W.C. Ins. | W.C. Ins. | Ins. Co. | Company maybe | Probably Ins.Co. |
| 7) Would any money be expected if off work for 8 days or more? | Probably | Don't know | Some, yes | Yes | Yes | Yes, under W.C. | Yes, W.C. Ins. | Yes | Probably | Probably |
| 8) If so, why expected? | Don't know | No reply | Has to be paid | Comp. Act | State Law | A law | State law | Ins. Co. must pay | Don't know | I expect it's a state law |
| 9) Ever heard of a workmen's compensation act? | No | No | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes |
| 10) If so, where told & by whom? | No reply | No reply | Read abt it | Read it in Calif | Read it 20 yrs ago | Minn.State Commission | Learned long ago | Don't remember | No reply | Union in Nevada & conventions |
| 11) What will it do for a worker? | No reply | No reply | Pays some sort of benefits | Pays Dr & weekly benefits | Paymts for injuries | Pays inj. & Dr. benefits | Pays inj. & Dr. benefits | Pays for inj from Soc. Sec. | No reply | Pays inj. & med. benefits |

APPENDIX C

REPORT OF ORAL QUESTIONNAIRES

Type of Business: Contractor Engaged in Residence and Commercial Construction

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M | M | M | M | M |
| 2) Job Classification | Lab-orer | Appren-tice | Carpen-ter | Carpen-ter | Carpen-ter | Carpen-ter | Fore-man | Lab-orer | Lab-orer | Lab-orer |
| 3) Length of Employment with Firm | 2½ yrs | 3½ yrs | 4½ yrs | 3 yrs | 2½ yrs | ½ yr | 5 yrs | 2 yrs | 2 mos | 2½ mos |
| 4) Union Member | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 5) Ever injured needing a doctor? | No | No | Yes | No | No | No | No | No | No | No |
| 6) Who would or did pay bill? | Don't Know | Ins. Co. | Ins. Co. | Comp. Ins. Co. | Ins. Co. | W.C. Ins. Co. | W.C. Ins. Co. | Ins. Co. | Company: probably maybe | Ins. Co. |
| 7) Would any money be expected if off work for 8 days or more? | Prob-ably | Don't know | Some, yes | Yes | Yes | W.C. | under W.C. | Yes, Yes | Prob-ably | Prob-ably |
| 8) If so, why expected? | Don't know | No | Has to repay the paid | Comp. Act | State Law | State law | State law | Ins. Co. must pay | Don't know | It's a state law |
| 9) Ever heard of a workmen's compensation act? | No | No | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes |
| 10) If so, where told & by whom? | No | No repay | Yes repay | Heard it about it | Heard it in Calif. | Minn. state 20 yrs | Learned long ago | Don't remember repay | No | Nevada & convention |
| 11) What will it do for a worker? | No repay | No repay | Pays some benefits | Pays Dr. sort of benefits | Pays Dr. & weekly benefits | Pays int. for in-ig Dr. | Pays int. for injuries | Pays int. & Dr. benefits | No repay | Pays int. & med. benefits |

# APPENDIX C

## REPORT OF ORAL QUESTIONNAIRES

Type of Business: Local Laundry

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | F | F | F | M | M | M | F | F | F | F |
| 2) Job Classification | Mark-er | Wet Wash | Check-er | Driver | Driver | Driver | Adjust-or | Counter Girl | Floor Lady | Presser |
| 3) Length of Employment with Firm | 5 yrs | 7 mos | 2½ yrs | 2½ mos | 1½ yrs | 3 mos | 7 yrs | 2 mos | 2½ yrs | 3 yrs |
| 4) Union member | No | No | No | No | No | No | No | No | No | No |
| 5) Ever injured needing a doctor? | No | No | No | No | No | No | Yes | No | No | No |
| 6) Who would or did pay bill? | Com-pany | Don't know | Com-pany | Ins. Co. | Don't know | Ins. Co. | Ins. Co. | Ins. Co. | Com-pany | Ins.Co. |
| 7) Would any money be expected if off work for 8 days or more? | Yes | Don't know | Yes | Don't know | Yes | Yes | No | Don't know | Don't know | Don't know |
| 8) If so, why expected? | Don't Know | No reply | Ins.Co. has to | No reply | Don't know | Ins.Co. has to | No reply | No reply | No reply | No reply |
| 9) Ever heard of a workmen's compensation act? | No | No | Yes | Yes | Yes | Don't remem-ber | No | Yes | No | No |
| 10) If so, where told and by whom? | No reply | No reply | Read of it | Told of it in Calif. | Told of it in Ohio | No reply | No reply | Soc. class in college | No reply | No reply |
| 11) What will it do for a worker? | No reply | No reply | Don't know | Pays some sort of benefit | Pays a hurt man some-thing | No reply | No reply | Covers hours, injuries; retiremt | No reply | No reply |

APPENDIX C

RESULTS OF SOME QUESTIONNAIRES

Type of Business: Local Laundry

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | F | F | F | M | M | M | F | F | F | F |
| 2) Job Classification | Wash. or Wash. | Check-er | Driver | Driver | Driver | Driver | Adjust-or | Counter | Girl | Floor Lady |
| 3) Length of Employment With Firm | 5 yrs. | 7 years | 2½ years | 2½ years | 1½ years | 3 mos. | 7 yrs. | 2 mos. | 2½ yrs. | 1 yrs. |
| 4) Union member | No | No | No | No | No | No | No | No | No | No |
| 5) Ever injured pending a portion? | No | No | No | No | No | No | No | Yes | No | No |
| 6) Who would or did pay bill? | Company | Don't know | Co. | Co. | Don't know | Ins. | Ins. | Co. | Ins. Co. | Company |
| 7) Would any money be expected if off work for 8 days or more? | Yes | Don't know | Yes | Don't know | Yes | Yes | No | Don't know | Don't know | Don't know |
| 8) If so, why expected? | Don't know | No reply | Ins. Co. has no reply | No reply | Don't know | Ins. Co. has no reply | No reply | No reply | No reply | No reply |
| 9) Ever heard of a workman's compensation act? | No | No | Yes | Yes | Yes | Yes | No | Yes | No | No |
| 10) If so, where told and by whom? | No reply | No reply | Head of Yoma Coll. in Ohio: reply of it | No reply | No reply | No reply | No reply | Soc. claims in colleges | No reply | No reply |
| 11) What will it do for a worker? | No reply | No reply | Don't know | Pays a part of some-thing | No reply | No reply | No reply | Covers some hours, injuries, benefits | No reply | No reply |

# APPENDIX C

## REPORT OF ORAL QUESTIONNAIRES

Type of Business: Nation-wide Retail Store

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | F | F | M | M | M | F | M |
| 2) Job Classification | Salesman | Salesman | Salesman | Head, Budget, 15 mos | Elevator Operator | Shoe Repair | Shoe Repair | Salesman | Saleswoman | Salesman |
| 3) Length of Employment with firm | 8 yrs | 2½ yrs | 1 yr | 8 mos | 3 wks | 1 mo | 1 mo | 7 mo | 25 yr | 7 mos |
| 4) Union member | No | No | No | No | No | No | No | No | No | No |
| 5) Ever injured needing a doctor? | No | No | No | No | No | No | No | No | Yes | No |
| 6) Who would or did pay bill? | Travellers Ins | Travellers Ins | Company | Travellers Ins. Co. | Company probably | Prob. Ins Co | Prob. Ins Co | Co. under W.C | Ins. Co. | Ins. Co. |
| 7) Would any money be expected if off work 8 days or more? | Yes, Travellers pay | Travellers pay | Travellers pay | Full salary if off 30 days or less | Not unless employed 6 mos. | May be | May be | Yes | Yes, full salary | Yes |
| 8) If so, why expected? | Ins. Co. has to | Ins.Co. has to | Ins.Co. has to | Company rule | Company policy | Don't know | Don't know | Because of law | Co. policy | Co. policy |
| 9) Ever heard of a workmen's compensation act? | Yes | Yes | Yes | No | Yes | Yes | No | Yes | Yes | Yes |
| 10) If so, where told or by whom? | Read Co. pamphlet | Read Co. pamphlet | Read Co. Pamphlet | No reply | Econ. Teacher A.H.S. | Saw Posters in Ark. | No reply | Don't know | Store told me | Store staff |
| 11) What will it do for a worker? | Cover injuries Ins. Co. pays no set amt. | Covers injuries | Covers injuries | No reply | Part of Soc Sec Act & pays for sick., inj. retiremt | Don't know | No reply | Sickness benefits | Pays for sickness | Pays for off work |

APPENDIX C

RECORD OF ORAL QUESTIONNAIRES

Type of Business: Metropolitan Retail Store

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | F | M | M | M | F | M |
| 2) Job Classification | Salesman | Salesman | Salesman | Salesman | Secretary | Shoe Repairer | Shoe Repairer | Salesman | Salesgirl | Salesman |
| 3) Length of Employment with Firm | 8 yrs | 2½ yrs | 3 yrs | 8 mos | 3 mos | 1 mo | 1 mo | 7 mos | 25 yrs | 2 mos |
| 4) Union member | No | No | No | No | No | No | No | No | No | No |
| 5) Ever injured needing a doctor? | No | No | No | No | No | No | No | No | No | No |
| 6) Who would or did pay: | Travelers Ins. Co. | Travelers Ins. Co. | Travelers Ins. Co. | Travelers Ins. Co. | Travelers Ins. Co. | Travelers Ins. Co. | Travelers Ins. Co. | Travelers Ins. Co. | Prob. Company | Prob. Company |
| 7) Should any money be expected if off work 8 days or more? | Yes, pay | Yes, pay | Yes, pay | Yes, pay | Full salary not usually | Yes, pay | Yes, pay | Yes, pay | probably not | Yes, pay |
| 8) If so, why expected? | Ins. Co. has to | Ins. Co. has to | Ins. Co. has to | Ins. Co. has to | Company rule | If off 30 days or less | If off 30 days or less | Company policy | Don't know | Because Co. has to |
| 9) Ever heard of a workmen's compensation act? | Yes | Yes | Yes | No | Yes | Yes | No | Yes | Yes | Yes |
| 10) If so, where told or by whom? | Head Co. pamphlet | Head Co. pamphlet | Head Co. pamphlet | Pamphlet | Boss. | Saw | No reply | Pamphlet | Pamphlet | Don't know |
| 11) What will it do for a workman? | Cover injuries | Cover injuries | Cover injuries | Cover injuries | Part of U.S. law | Son Sec. in Ark. | Teacher | No reply | Don't know | Don't know |
| | Ins. Co. pays no sick. | Ins. Co. pays no sick. | Ins. Co. pays no sick. | Ins. Co. pays no sick. | No reply | Don't know | Postcard reply | No reply | No reply | No reply |
| | | | | | | | | | | |

# APPENDIX C

## REPORT OF ORAL QUESTIONNAIRES

Type of Business: Local Men's and Women's Clothing Stores (combined because of smallness of size)

| | Men's Clothing | | Women's Clothing | | | | |
|---|---|---|---|---|---|---|---|
| Questions | 1 | 2 | 1 | 2 | 3 | 4 | 5 |
| 1) Sex | M | M | M | F | F | F | F |
| 2) Job Classification | Salesman | Salesman | Advert. Artist | Saleslady | Bookkeeper | Saleslady | House-keeper |
| 3) Length of Employment with Firm | 3 yrs | 10 yrs | 7 days | 2 yrs | 4 yrs | 3 mos | 4 mos |
| 4) Union member | No | No | No | No | No | No | No |
| 5) Ever injured needing a doctor? | No | No | No | No | No | No | No |
| 6) Who would or did pay bill? | Ins. Co. | Ins. Co. | Pers. Ins. | Store pays | Company | I'd pay bill | Don't know |
| 7) Would any money be expected if off work for 8 days or more? | Don't know | Don't know | No | Don't know | Yes | Pers. Ins. would pay | No |
| 8) If so, why expected? | No reply | No reply | No reply | No reply | Thru Work-men's Comp. | No reply | No reply |
| 9) Ever heard of a workmen's com-pensation act? | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 10) If so, where told or by whom? | Read it somewhere in store | Read about it | Read of it | Friends | I've read the policy | Read about it | Don't remember |
| 11) What will it do for a worker? | Don't remember | Draw money under it | Pays some sort of benefits | Don't know | Pays inj & medical benefits | Part of Soc Sec Act | Don't know |

## APPENDIX C

### REPORT OF ORAL QUESTIONNAIRES

Type of Business: Local Men's and Women's Clothing Stores (combined because of smallness of size)

| Questions | Men's Clothing 1 | Men's Clothing 2 | Women's Clothing 1 | Women's Clothing 2 | Women's Clothing 3 | Women's Clothing 4 |
|---|---|---|---|---|---|---|
| 1) Sex | M | M | F | F | F | F |
| 2) Job Classification | Salesman | Salesman | Advert. Artist | Saleslady | Bookkeeper | Saleslady: Housekeeper |
| 3) Length of Employment with Firm | 5 yrs | 10 yrs | 7 days | 2 yrs | 4 yrs | 2 mos 4 mos |
| 4) Union member | No | No | No | No | No | No No |
| 5) Ever injured reading a doctor? | No | No | No | No | No | No No |
| 6) Who would or did pay bill? | Ins. Co. | Ins. Co. | Perm. Ins. pays | Store Company | I'd pay bill | Don't know |
| 7) Would any money be expected if off work for 8 days for work? | Don't know | Don't know | No | Don't know | Yes | Pers. Ins. would pay No |
| 8) If so, why expected? | No reply | No reply | No reply | No reply | Firm Work-men's Comp. | No reply |
| 9) Ever heard of a workmen's compensation act? | Yes | Yes | Yes | Yes | Yes | Yes Yes |
| 10) If so, where told or by whom? | Read it somewhere in store | Read about it | Read of it | Friends | I've read the policy | Read about it Don't remember |
| 11) What will it do for a workerf? | Don't remember | Draw money under it | Pays some sort of benefits | Don't know | Pays inj. benefits | Part of a medical Ins. Co. Don't know See Ans |

# APPENDIX C

## REPORT OF ORAL QUESTIONNAIRES

Type of Business: Lumber Company, Hardware and Plumbing Sales

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M | M | M | M | M |
| 2) Job Classification: | Yard Man | Yard Man | Yard Man | Shipping Clerk | Truck Driver | Helper | Laborer | Truck Driver | Salesman | Truck Driver |
| 3) Length of employment with firm. | 30 yrs | 4 yrs | 8 yrs | 21 yrs | 2 mos | 5 yrs | 2 yrs | 2 yrs | 2 yrs | 3½ yrs |
| 4) Union member | No | No | No | No | No | No | No | No | No | No |
| 5) Ever injured needing a Dr.? | Yes | No | No | Yes | No | No | No | Yes | No | Yes |
| 6) Who would or did pay bill? | Company | Co. maybe | Prob. Ins.Co. | Company | Ins.Co. | Company | Company | Ins.Co. | Insurance | Compens. Insurance |
| 7) Would any money be expected if off work 8 days or more? | Yes, 1/2 wages | No | Suppose So | Don't know | Yes | Yes | No | Yes, full salary | Full salary | Yes |
| 8) If so, why expected? | Ins.Co. has to pay | No reply | No reply | No reply | W. C. Act | Don't know | No reply | Ins.Co. has to pay | Company policy | Co. pays for few days |
| 9) Ever heard of a workmen's compensation act? | No | No | No | Yes | Yes | No | No | Yes | Yes | Yes |
| 10) If so, where told and by whom? | No reply | No reply | No reply | Don't remember | Told by Ky.Union & read it | No reply | No reply | Friends | Read about it | Friends, read about it |
| 11) What will it do for a worker? | No reply | No reply | No reply | Don't remember | Med.Benefits & lost time N.M. Act ? unknown | No reply | No reply | Don't remember | Pays med. bills | Pays a man money |

APPENDIX D

REPORT OF CASE QUESTIONNAIRES

Type of Business: Lumber Company, Hardware and Plumbing Sales

| Questions | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1) Sex | M | M | M | M | M | M | M | M | M | M |
| 2) Job Classification: | Yard Man | Yard Man | Yard Man | Shipping Clerk | Truck Driver | Helper | Truck Driver | Lab-orer | Salesman | Truck Driver |
| 3) Length of employment with firm. | 30 yrs | 4 yrs | 8 yrs | 21 yrs | 2 mos | 5 yrs | 2 yrs | 2 yrs | 34 yrs | |
| 4) Union member | No | No | No | No | No | No | No | No | No | No |
| 5) Ever injured reading & Dr.? | Yes | No | No | Yes | No | No | Yes | No | No | Yes |
| 6) Who would or did pay bill? | Yes, pay | Yes, pay | Yes Co. | Company | Ins.Co. | Com-pany | Ins.Co. | Com-pany | Ins.Co. | Insurance Companies. |
| 7) Would any money be expected: If off work 8 days or more? wages: | No | No | Suppose: Ins.Co: | Don't know | Yes | Yes | No | Yes, full salary | Full salary | Yes |
| 8) If so, why expected? | | | Ins.Co: has to pay | No reply | No reply | No reply | W. C. act | Don't know | No reply: Ins.Co. has to pay | Company pay for few days |
| 9) Ever heard of a workman's compensation act? | No | No | No | Yes | Yes | No | No | Yes | Yes | Yes |
| 10) If so, where told and by whom? | No | No | No | Don't remem-ber | Found by Union reply: | No reply: | No reply: | Friends: | Head about it & read it: | Friends, read about it |
| 11) What will it do for workers? | No | No | No | Don't remem-ber | It's a lost time: | No reply: | No reply: | Don't remember | Pays med. bills. | Pays a man money |
| | | | | | Bur-N.H. act workmen | | | | | |

## APPENDIX D

## THE CASE FOR STATE FUNDS[1]

### Public Responsibility

1. Workmen's compensation, as a form of social insurance created and required by law, should be furnished at lowest net cost.

2. Wage earners concerned with adequate compensation benefits, under a system that denies them their former right to sue for damages, have a right to insist that every possible dollar of the cost of compensation be devoted to its primary purpose of their protection.

3. Employers under requirement to provide workmen's compensation protection to their workers should not be subjected to a denial of policy coverage. (Private carriers in most states can and do exercise the right to reject a risk.)

4. A State fund offers coverage to all employers - not merely those risks whose accident experience is most favorable and hence more profitable from an underwriting standpoint.

5. The public, as ultimate consumer, pays the ultimate increased cost of products due to this industrial protection, and has a public interest in the lowest possible cost of compensation insurance to each employer.

6. Other forms of social insurance protection, more recently adopted, provide this protection through exclusive public funds without the participation of private insurance interests.

### Complete Security

1. Failures of private insurance companies have in recent years resulted in heavy loss to injured workers and their dependents through unpaid compensation awards.

2. Many employers, after conscientiously paying their compensation premiums to private insurance corporations, have nevertheless through the failure of such insurance companies been obliged to pay out large sums in accident compensation to their employees.

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[1] John B. Andrews, Progress of State Insurance Funds Under Workmen's Compensation (United States Dept. of Labor, Division of Labor Standards, Bulletin No. 30, U.S. Govt. Printing Office, Washington, 1939) p. 35 f.

APPENDIX B

## THE CASE FOR STATE FUNDS[1]

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1 John B. Andrews, Progress of State Insurance Funds Under Workmen's Compensation (United States Dept. of Labor, Division of Labor Standards, Bulletin No. 35, U.S. Govt. Printing Office, Washington, 1929) p. 55 f.

3. Not one dollar of loss has ever been suffered by either worker or employer through the failure of a state compensation fund in any State.

4. A State fund covers all risks included in the law - not merely those selected as larger or more profitable.

5. Under exclusive State funds, in States like Ohio and in the Canadian Provinces, the worker is protected even if the employer has failed to pay premiums.

## Social Service

1. Under State compensation funds there is no profit motive to give less in benefits than is provided by the law.

2. The substantial savings to employers through State funds permit greater benefits to workers at no increase in cost.

3. With no other kinds of insurance to handle, the representatives of State funds can specialize in workmen's compensation.

4. Under State compensation funds the municipal and other political subdivisions of the State receive service at lowest net cost to taxpayers.

## Administrative Economy

1. The cost to the State of adequately supervising the compensation work of private casualty insurance companies is about equal to the cost of doing the job directly through a State compensation fund.

2. Under exclusive State funds there is avoidance of wasteful duplication of -

(1) Insurance solicitation.
(2) Reporting of injuries.
(3) Investigation of claims.
(4) Adjustment of claims.
(5) Supervision of payments.
(6) Inspection for safety.
(7) Inspection for compliance.
(8) Auditing of pay rolls.

3. Under State funds there are considerable savings because of fewer trivial and technical appeals.

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(4) Adjustment of claims.
(5) Supervision of payments.
(6) Inspection for safety.
(7) Inspection for compliance.
(8) Auditing of pay rolls.

3. Under State funds there are considerable savings because of lower trivial and technical appeals.

## Lower Cost to Employers

1. The economy of workmen's compensation through State funds, by elimination of unnecessary expense, is indicated by comparison of the average expense ratios (the proportion of collected premiums taken for expenses and profits):

(1) For stock companies (selected risks) it is now about 40 percent.

(2) For mutual companies (selected risks) it is now from 20 to 25 percent.

(3) For competitive State funds (all risks) it is from 10 to 20 percent.

(4) For exclusive State funds (all risks) it is from 5 to 10 percent.